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ABSTRACT

Case citations from five legal areas--college students, liability on campus, sport law, employment, and employment discrimination--are presented in this document. Each section offers brief summaries of cases and concludes with a table of cases. The first section on college students examines litigation involving student finances, disciplinary actions related to student conduct and academic performance, and constitutional and civil rights. Cases pertinent to liability on campus include the following issues: contracts; personal injury; workers; compensation; deceptive practices; medical malpractice; antitrust; patents; and estates and wills. The section on sport law litigation examines issues in torts, eligibility, and employment. Employment litigation is presented in the fourth section, involving nontenured and tenured employees, discipline/termination, collective bargaining, defamation, and privacy issues. Employment discrimination cases in the fifth section concern the Civil Rights Restoration Act, Title VI of the 1964 Civil Rights Act, retaliation, the Age Discrimination Employment Act, and the Rehabilitation Act of 1973. (LMI)

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Case Citations
1991
ELEVENTH SERIES

Edited by Linda A. Sharp, Visiting Assistant Professor
School of HPER, Indiana University

Number 1 — College Students, *Charles J. Russo*

Number 2 — Liability on Campus, *Steve W. Batson*

Number 3 — Sport Law, *Linda A. Sharp*

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Case Citations
COLLEGE STUDENTS

ELEVENTH Series, Number 1

Prepared by Charles J. Russo, Assistant Professor
Graduate School of Education, Fordham University

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Student Finances

Tuition Rights of Out-of-State Students

An unemancipated student who applied for in-state tuition in 1983 was ineligible since his father, a foreign service officer, had not lived in state since 1959. The father had, however, among other things, an interest in a house in state, paid property and resident taxes, voted in state, expressed an interest to live in state upon retirement, and frequently visited family and friends in state. Nonetheless, the father failed to meet the state's prerequisite of being domiciled in state for twelve months. ***Bisson v. University of N.H.***, 578 A.2d 320 (N.H. 1990).

A university did not deprive an out-of-state law student of his due process rights in its decision to deny him resident status when it took his initial non-resident status into consideration along with his continued status as a student during his residency. Also, it did not violate equal protection by considering his failure to file a Wisconsin income tax return or to withhold income tax from earnings in determining his intent to establish and maintain a home in Wisconsin since these were only factors in the decision and the university did not condition resident status upon his past payment of such taxes. ***DeCecco v. Board of Regents***, 442 N.W.2d 585 (Wis. Ct. App. 1989).

A student's military residence records, Law School Admissions Test application, and tax payments indicated domicile in another state. Therefore, the court found that there was substantial evidence to deny him residency status and it affirmed that he was not entitled to an explanation of the committee's decision to deny in-state resident status. ***Wilson v. State Residence Comm.***, 374 S.E.2d 415 (N.C. Ct. App. 1988).

Financial Aid and Scholarship Programs

Federal Programs

The National Health Service Corps rule under which the government decided whether to modify the obligations of a participant in the Corps' scholarship program was not facially invalid. The case was remanded to determine whether the rule was invalid as applied since the trial court struck down the waiver regulation on its face without ruling on the plaintiff's challenge to the rule as applied. ***Buongiorno v. Sullivan***, 912 F.2d 504 (D.C. Cir. 1990).

The statute governing the repayment obligation of a defaulting participant in the Public Health and National Health Service Corps Scholarship Training Program did not provide for proration of the amount owed if the service obligation was only partially completed. Also, whether another statute permits proration was not subject to judicial review due to the failure to exhaust administrative review. ***United States v. Barry***, 904 F.2d 29 (11th Cir. 1990).

When a former student challenged the constitutionality of notice regarding her defaulted student loan being offset against her income tax refund, the court ruled that since the Department of Education did not cause the loss of her income tax refund, she lacked standing to challenge the constitutionality of the notice. ***Jones v. Cavazos***, 889 F.2d 1043 (11th Cir. 1989).

In an action to recover overpayment of federal educational assistance on the part of the Veterans Administration, it was held that the court should generally set out reasons for its decision with some specificity rather than simply track the language of the rule on summary judgment. ***United States v. Woods***, 885 F.2d 352 (6th Cir. 1989).

The receipt of federal financial assistance by any student or portion of a school subjected a law school to the provisions in title VI of the Civil Rights Act of 1964 prohibiting racial discrimination in any program receiving federal funds. ***Radcliff v. Landau***, 883 F.2d 1481 (9th Cir. 1989).

After a physician refused to choose a location on the placement opportunity list pursuant to the obligations necessary to fulfill her National Health Service Corps scholarship, she was found to have breached her obligation. The Sixth Circuit also ruled that the district court lacked the discretion to assess less than treble damages against her. ***United States v. Duffy***, 879 F.2d 192 (6th Cir. 1989).

A search and seizure of an educational institution's records as part of a joint investigation by the United States Attorney's Office, the FBI, and the Inspector General's Office of Investigations was not an abuse of the court's process when it summarily enforced a subpoena ***duces tecum*** by the Inspector General in an investigation of fraud and abuse in connection with federal student financial aid programs. ***United States v. Teeven***, 745 F. Supp. 220 (D. Del. 1990).

A physician who was a recipient of a National Health Services Corps Scholarship Loan as a medical student failed to begin service at his assigned Health Manpower Shortage Area; thus he was ruled to be in default and had to repay the debt. ***United States v. Gross***, 725 F. Supp. 892 (W.D. La. 1989).

After a recipient of a National Health Service Corps scholarship defaulted on his agreement by failing to serve in his assigned Health Manpower Shortage area, he was found to be in default and

was obligated to repay triple the amount of the scholarship funds he had received. ***United States v. Hatcher***, 716 F. Supp. 447 (S.D. Cal. 1989).

Since a university established the likelihood of prevailing on the merits it was held that the Department of Education lacked the authority to take emergency action to terminate the university's participation in federal student financial assistance programs. The statute authorizing university participation required that such action could take place only after the university had been given reasonable notice and an opportunity to be heard on the merits. ***Ross Univ. v. Cavazos***, 716 F. Supp. 638 (D.D.C. 1989).

A doctor who failed to establish an impossibility defense based on the contention that he was incapable of performing primary care was found liable for a breach of his National Health Service Corps Scholarship program contract and was obligated to repay triple the amount of the scholarship funds he had received. ***United States v. Martin***, 710 F. Supp. 271 (C.D. Cal. 1989).

The Department of Education was required to provide notice and a hearing on the record to a training school prior to the revocation of its eligibility for government aid programs under the Higher Education Act since the school had liberty and property interests at stake. ***Continental Training Servs., Inc. v. Cavazos***, 709 F. Supp. 1443 (S.D. Ind. 1989).

A prison inmate taking college courses did not have standing to allege, either as an individual or a taxpayer, that the college defrauded the government by forcing inmates to take more courses than they desired in order to collect the maximum amount of Pell Grant funding. This was so even though he alleged that in the future he could find out that he had no further eligibility for such a grant. ***Abraham v. Marist College***, 706 F. Supp. 294 (S.D.N.Y. 1989).

A work study grant obtained by a law student from the federal Department of Education could, under federal law, properly be considered income for the purposes of determining his entitlement to Aid to Dependent Children benefits for the month in which the grant was used for living expenses. ***Swofford v. Adult and Family Servs. Div.***, 768 P.2d 945 (Or. Ct. App. 1989).

In a case dealing with the award of Aid to Families with Dependent Children benefits, the policy of considering graduate student loans as income to the extent that they are available for current living costs did not violate federal policy. However, related educational expenses such as books, fees, and child-care services necessary for school attendance could be deducted from the loan amount. ***Danner v. Division of Family Servs.***, 772 S.W.2d 868 (Mo. Ct. App. 1989).

State Programs

The State Commissioner acted neither arbitrarily nor capriciously in determining that students of a private business school did not receive an educationally appropriate program when the school ceased operations in mid-term and thereby failed to conduct the minimum number of hours approved by the Education Department. Also, since the school failed to provide sufficient class hours, it had materially breached its contract and failed to satisfy the eligibility requirements for the State Tuition Assistance [scholarship] Program. ***Oliver Schools, Inc. v. Sobol***, 558 N.Y.S.2d 828 (Sup. Ct. 1990).

A business school was entitled to payments from the State Tuition Assistance [scholarship] Program for students attending regular summer sessions, regardless of whether they had attended preceding or subsequent sessions; however, it was not entitled to partial assistance during those terms when no instruction was given for the six week periods of administrative break. ***Drake Business Schools Corp. v. New York State Higher Educ. Servs. Corp.***, 550 N.Y.S.2d 188 (App. Div. 1990).

An action was brought by high school students and two organizations which challenged the state's exclusive reliance on Scholastic Aptitude Test scores in awarding merit (college) scholarship awards. The plaintiffs alleged that to do so discriminated against female students in violation of the equal protection clause of the fourteenth amendment. They were granted class certification and the suit was permitted to proceed. ***Sharif by Salahuddin v. New York State Educ. Dep't***, 127 F.R.D. 84 (S.D.N.Y. 1989).

A consent agreement between the operator of a private business school and the Department of Education did not require the annulment of a comptroller's final audit that the school was overpaid for improperly certifying student eligibility for tuition assistance awards. ***N.J. Koss v. Regan***, 539 N.Y.S.2d 579 (App. Div. 1989).

Students at a proprietary business school who had taken leaves of absence were ineligible for State Tuition Assistance [scholarship] Program awards under a regulation stating that recipients of such awards must be making satisfactory academic progress toward completion of a program's requirements. ***Royal Business School v. New York State Dep't of Educ.***, 534 N.Y.S.2d 489 (App. Div. 1988).

Parental Support of Students

A wife was entitled to reimbursement from her former husband for the costs of college expenses which he owed pursuant to a separation agreement stating that he would pay for reasonable college expenses of the parties' children if he were able to do so. ***Stefani v. Stefani***, 560 N.Y.S.2d 862 (App. Div. 1990).

It is not an abuse of the court's discretion to award educational support payments as part of a divorce settlement if a father has the earning capacity to contribute to his daughter's support without undue hardship. ***Napier v. Hutchinson***, 579 A.2d 981 (Pa. Super. Ct. 1990).

An adopted daughter's alleged lack of communication with her father for about two years and the use of her former, rather than adoptive, name did not establish a willful estrangement relieving the father of his obligation to provide financial support for her college education. ***Fager v. Fatta***, 576 A.2d 1089 (Pa. Super. Ct. 1990).

A father who voluntarily assumed the obligation to pay for his daughter's college education under terms of a separation agreement could not use the funds in a trust account under the Uniform Gifts to Minors Act to pay for her college education. ***Brodsky v. Brodsky***, 570 A.2d 1235 (Md. 1990).

In determining the amount a father was required to contribute toward his daughter's college education pursuant to the terms of a divorce decree, the trial court was told to consider the available income of each party not merely by recourse to gross earnings less expenses, but also with an awareness of the predivorce living standards of each party. ***Enrico v. Goldsmith***, 568 A.2d 576 (N.J. Super. Ct. 1990).

Since the findings sufficiently reflected the child's aptitude for postsecondary education, an order requiring a divorced father to contribute toward his daughter's educational needs was upheld because even though she was employed, she was unable to support herself sufficiently to relieve her father of his support obligation. ***Brancheau v. Weddle***, 555 N.E.2d 1315 (Ind. Ct. App. 1990).

When a divorced father's daughter completed her undergraduate degree and reached the age of 21, the prior support order providing that he was to pay one-half of her college expenses was no longer in effect. Therefore, his former wife's petition for a modification of the order to require him to pay the daughter's medical school expenses was denied. ***Shriver v. Kobold***, 553 N.E.2d 867 (Ind. Ct. App. 1990).

A divorced noncustodial father's obligation to continue child support to age 21 pursuant to a divorce decree included the duty to contribute to his daughter's college education since she was deserving and scholastically capable. ***Zakarin v. Zakarin***, 565 So. 2d 790 (Fla. Dist. Ct. App. 1990).

An agreement incorporated into a divorce decree providing that the husband was to pay all of the regular costs associated with his child's obtaining a college education to the level of an undergraduate degree required him to pay for room, board, books, and tuition, but not clothing expenses and the cost of travel. ***Kier v. Kier***, 454 N.W.2d 544 (S.D. 1990).

Parties to a divorce action who earned substantially the same incomes were directed to contribute equally to their children's college education expenses, but the husband was required to pay only 50% of his daughter's unreimbursed tuition for her college education in excess of $5,000 because she received tuition reimbursement and earnings from her part-time job. He was also required to pay only 50% of his son's college expenses in excess of $5,000 because his wife had given each child $5,000 from the parties' joint account without his consent. ***Guiry v. Guiry***, 552 N.Y.S.2d 421 (App. Div. 1990).

A daughter whose parents were divorced sought to compel them to pay her college expenses on the basis that her father allegedly made an oral promise and that her mother had a common law obligation to provide support. The court ruled that under the facts of the case she could seek financial support from her parents even though she was no longer a minor. ***Johnson v. Bradbury***, 558 A.2d 61 (N.J. Super. Ct. App. Div. 1989).

An adult child's abusive behavior and willful estrangement of his relationship with his mother precluded his receipt of postmajority financial support for college following the divorce of his parents. ***Milne v. Milne***, 556 A.2d 854 (Pa. Super. Ct. 1989).

The offset of an automobile and related expenses agreed upon by a father and daughter but never approved by the court did not satisfy the father's court-ordered duty to pay for her college tuition and books. ***Holliman v. Holliman***, 539 So. 2d 310 (Ala. Civ. App. 1989).

Student Loans

A business college's alleged failure to provide educational services was not a defense to repayment of student loans guaranteed by state or private agencies, even if there had been a close relationship between the school and lenders. Moreover, student loans made, issued, or guaranteed under the Higher

Education Act are exempt from the Federal Trade Commission's rule on the preservation of consumer defenses which requires consumer credit contracts to include a provision to borrowers stating that they are subject to all claims and defenses that the debtor has against the seller of goods and services. ***Veal v. First Am. Sav. Bank***, 914 F.2d 909 (7th Cir. 1990).

An assigned student loan debt which was time barred for collection by a lawsuit cannot be collected by a tax refund offset if ten years have passed after the debt became delinquent in the hands of the Secretary of Education's assignor. ***Grider v. Cavazos***, 911 F.2d 1158 (5th Cir. 1990).

A university could not deny auxiliary aid, e.g., a sign language interpreter to a handicapped student, on the basis that the student failed to show a need for financial assistance. ***United States v. Board of Trustees***, 908 F.2d 740 (11th Cir. 1990).

A South Dakota student loan guaranty agency was unable to show that a policy implemented by the Secretary of Education was arbitrary or capricious. Therefore, the agency's request for a waiver from the requirement that it turn over its excess cash reserves to the Secretary was denied even though the agency argued that the reserves were necessary to meet future guaranty obligations. ***Education Assistance Corp. v. Cavazos***, 902 F.2d 617 (8th Cir. 1990).

The six year statute of limitations period for the Attorney General to bring suit on a defaulted federally funded student loan applied to a counterclaim by the Department of Education in litigation initiated by the former student even though the statute does not make specific reference to counterclaims. ***Hurst v. United States Dep't of Educ.***, 901 F.2d 836 (10th Cir. 1990).

The statute authorizing the federal government to recover excess cash reserves from a state student loan agency does not violate any constitutional provisions since the funds are not personal property and the taking does not cause any breach of contract nor abrogate any contractual rights. ***Ohio Student Loan Comm'n v. Cavazos***, 900 F.2d 894 (6th Cir. 1990).

Three state agencies responsible for guaranteeing student loans challenged the constitutionality of statutes requiring them to transfer excess reserves to the Secretary of Education and permitting him to withhold reimbursements. The court upheld the constitutionality of the excess reserve amendments and ruled that insofar as the funds are not private property the agencies do not have a vested right to payments. ***South Carolina State Educ. Assistance Auth. v. Cavazos; Maryland Higher Educ. Loan Corp. v. Cavazos; North Carolina v. United States***, 897 F.2d 1272 (4th Cir. 1990).

In determining whether an implied private right of action exists under the Higher Education Act of 1965, it was necessary to examine the specific relevant code section. The court found that the federal regulation dictating when and how student loan proceeds held by an educational institution were to be applied does not create a private right of action. ***Hudson v. Academy of Ct. Reporting***, 746 F. Supp. 718 (S.D. Ohio 1990).

Since a state student loan guarantee agency did not have an ownership interest in its reserve fund, amendments to the Higher Education Act of 1965 requiring it to transfer excess reserve funds to the Department of Education are not unconstitutional. ***Georgia Student Fin. Comm'n v. Cavazos***, 741 F. Supp. 899 (N.D. Ga. 1990).

A former student lacked standing to argue that a lender did not use substantial efforts to collect on a student loan even though he received only two loan deferment forms over the life of the loan since the regulations requiring a lender to follow certain collection procedures are for the benefit of the government and not the borrower. ***United States v. McGill***, 734 F. Supp. 1014 (S.D. Fla. 1990).

A college did not have a private cause of action against a lender for alleged violations of the statutes governing the federal guaranteed student loan program since the extensive enforcement authority given to the Secretary of Education is the exclusive means for insuring the lender's compliance with the statutes and regulations. ***St. Mary of the Plains College v. Higher Educ. Loan Program***, 724 F. Supp. 803 (D. Kan. 1989).

State guaranty agencies did not have the fundamental indicia of ownership of excess cash reserves they held since they did not have the right to possess, use, or dispose of the funds except as authorized by statute and they never had a legitimate expectation that they would be able to do otherwise. Accordingly, amendments to the Higher Education Act compelling the elimination of these excess cash reserves did not violate any property rights protected by the fifth amendment. ***Delaware v. Cavazos***, 723 F. Supp. 234 (D. Del. 1989).

Contractual rights arising out of agreements between the Department of Education and guarantors under the Guaranteed Student Loan Program did not constitute property rights protected by the fifth amendment so that amendments to the Higher Education Act mandating the elimination of a portion of excess cash reserves held by guarantors did not constitute a taking without compensation. ***Great Lakes Higher Educ. Corp. v. Cavazos***, 711 F. Supp. 485 (W.D. Wis. 1989).

The State Department of Jobs and Training, Division of Rehabilitation Services had no authority to require a disabled individual to take out a student loan as a prerequisite to participation in a vocational rehabilitation training program absent properly promulgated rules for determining when loans were required. ***In re Jongquist***, 460 N.W.2d 915 (Minn. Ct. App. 1990).

Federal law does not preempt a Massachusetts law that an attorney is entitled to fair and reasonable fees in a default action brought by a private college against a student who defaulted on a student loan. ***Trustees of Tufts College v. Ramsdell***, 554 N.E.2d 34 (Mass. App. Ct. 1990).

It was not a denial of due process nor equal protection to find a doctor ineligible to participate in a student loan forgiveness program because she attended a medical school that was neither registered nor approved by the state even though students at the school were eligible to receive loans guaranteed by the New York State Higher Education Services Corporation. ***Van Bellingham v. Department of Educ.***, 555 N.Y.S.2d 571 (Sup. Ct. 1990).

In an action brought against a defaulting graduate student for collection of a promissory note he had executed in favor of the service, any disagreement he had over the granting of his degree was irrelevant in the action for collection on the note. ***Yale Univ. Adjustment Serv. v. Gallichon***, 572 A.2d 388 (Conn. App. Ct. 1990).

A former student was estopped from asserting the lack of the legal existence of the university in an action brought by the university to recover on a defaulted student loan. The student failed to file responsive pleadings even though the university acknowledged that it was not a legal entity separate from its board of regents. ***Board of Regents v. Harriman***, 792 S.W.2d 388 (Mo. Ct. App. 1990).

An action seeking to recover on a breached 1965 student loan was barred by the statute of limitations since the loan received no attention until a demand letter was sent almost eighteen years later and no further action was taken for another five years. ***State v. Cohen***, 551 N.Y.S.2d 688 (App. Div. 1990).

After losing several lawsuits concerning a dispute over his obligation to repay his college loan, the court held that it was frivolous for a former student to attempt to bring suit against two federal courts on the ground that they erred in ruling against him. ***Chipps v. United States Dist. Ct.***, 882 F.2d 72 (3rd Cir. 1989).

A state employee who had a past due student loan obligation brought suit seeking injunctive relief preventing the state of Illinois from withholding income to begin repayment of the loan. The case was rendered moot in light of the state's modification of its procedures for collecting past due loans from state employees. ***Toney v. Burris***, 881 F.2d 450 (7th Cir. 1989).

The Department of Education was entitled to recover payments made to a school on defaulted federally insured loans tainted by the school's violation of the Higher Education Act's points and premiums regulations. Although the Department had changed its view of the effect of the violation the school was aware of the Department's interpretation of what constituted a violation of the regulation and nonetheless chose not to adjust its conduct accordingly. ***LTV Educ. Sys. v. Bell***, 862 F.2d 1168 (8th Cir. 1989).

Although a six-year statute of limitations would have barred a government suit to collect an allegedly delinquent student loan debt, the debt remained legally enforceable within the meaning of federal statutes and IRS regulations permitting an offset against a federal tax return. ***Roberts v. Bennett***, 709 F. Supp. 222 (N.D. Ga. 1989).

Students at a bankrupt private college were not entitled to class certification in an effort to rescind their student loans on the ground that the college made fraudulent misrepresentations about itself; they also had no right to a private cause of action under the Higher Education Act. ***Graham v. Security Sav. and Loan***, 125 F.R.D. 687 (N.D. Ind. 1989).

The state's prosecution of an individual for fraudulently obtaining a National Direct Student Loan was not preempted by the federal statute establishing the loan program. ***People v. Brom***, 541 N.E.2d 745 (Ill. App. Ct. 1989).

A student who had defaulted on her student loans married, divorced, and remarried. The court ruled that since her married names were not false, the statute of limitations was not tolled by her presence in the state under different names unknown to the state. ***State Higher Educ. Servs. Corp. v. McGarry***, 542 N.Y.S.2d 58 (App. Div. 1989).

Partial payment of an obligation to repay student loans tolled the statute of limitations on all of the debtor's student loans since they all had the same starting and maturity dates, the same interest rate, and the university treated them as one debt. ***Cornell Univ. v. Roth***, 439 N.W.2d 154 (Wis. Ct. App. 1989).

A creditor could not garnish the proceeds of a federally guaranteed student loan in order to collect

on an antecedent business debt owed by the student. ***Schaerrer v. Westman Comm'n Co.***, 769 P.2d 1058 (Colo. 1989).

On remand from the United States Supreme Court, a Washington court found that the denial of financial assistance to a visually handicapped student to enable him to attend a private Bible college violated neither the free exercise clause of the first amendment nor the equal protection clause of the fourteenth amendment. ***Witters v. State Comm'n for the Blind***, 771 P.2d 1119 (Wash. 1989).

An amendment to the Food Stamp Act which expressly excluded lender-retained student loan fees from income when computing food stamp eligibility was effective on enactment and not upon the Secretary of Agriculture's issuance of implementing rules. ***Metzer v. Lyng***, 864 F.2d 75 (8th Cir. 1988).

Bankruptcy

The consolidation of a student loan obtained under the Higher Education Act does not change the date when the loan became due. If the loan first became due more than five years prior to the petition date, it was automatically discharged. ***In re McKinney***, 120 Bankr. 416 (N.D. Ohio 1990).

Under the provision of the Bankruptcy Code rendering a student loan dischargeable due to undue hardship, the mere fact that repayment of an educational loan imposes a hardship is insufficient to permit discharge of the loan. ***In re Foreman***, 119 Bankr. 584 (S.D. Ohio 1990).

Loans paid by debtors to finance the cost of their child's education were educational loans for the purposes of nondischargeability under the bankruptcy code. ***In re Martin***, 119 Bankr. 259 (E.D. Okla. 1990).

Since a debtor's sole motivation for filing a chapter 13 petition was to discharge her student loan, the plan was not proposed in good faith and could not be confirmed. ***In re Castonguay***, 119 Bankr. 256 (D. Kan. 1990).

The proper standard for determining whether an educational loan is dischargeable for undue hardship is whether the debtor's income is adequate to maintain a minimal standard of living while repaying the loan. ***In re Lekowicz***, 119 Bankr. 237 (D. Colo. 1990).

A student loan was nondischargeable even though a chapter 7 debtor was currently unable to repay her educational loan since her inability to repay the loan was self-imposed and her primary motivation for filing the chapter 7 petition was to discharge the loan debt. ***In re Boston***, 119 Bankr. 162 (W.D. Ark. 1990).

A chapter 13 plan providing a 20% dividend for unsecured creditors could not be confirmed where 81% of the unsecured debt consisted of student loans. ***In re McKinney***, 118 Bankr. 968 (S.D. Ohio 1990).

Since the repayment of student loans would impose undue hardship on a debtor, she was afforded an exception to the general rule of nondischargeability of student loan obligations because she was a divorced mother of three young children, her former husband was incurably ill and was unable to contribute significantly to their support, her home had been sold at foreclosure, and her monthly income from part-time jobs was not sufficient to meet necessary expenses and was only slightly above the poverty level. ***In re Reilly***, 118 Bankr. 38 (D. Md. 1990).

Since it should have run for sixty months to provide a greater dividend, a chapter 13 plan which was scheduled to run for forty-seven months and would have paid an 8% dividend on unsecured claims was not proposed in good faith. The debtor was essentially seeking the discharge of her student loans which would not have been dischargeable under chapter 7. ***In re Carpico***, 117 Bankr. 335 (S.D. Ohio 1990).

An unemployed, unmarried debtor who had no family obligations claimed that his financial resources would be insufficient for the foreseeable future to enable to support himself at subsistence levels while repaying his student loan. Since he was unable to establish undue hardship, his request for the discharge of his loan was denied. ***In re Burton***, 117 Bankr. 167 (W.D. Pa. 1990).

A debtor could not unilaterally modify an existing student loan agreement and pay the claim outside of the chapter 13 plan. ***In re Burke-Evanoff***, 116 Bankr. 614 (S.D. Ohio 1990).

Even though student loans comprised approximately 70% of a debtor's total indebtedness and her unsecured creditors would receive only 2.18% of their claims, her chapter 13 plan was proposed in good faith since she paid all of her disposable income into her chapter 13 plan, she was required to account for future salary increases, and she was in counseling to help get her finances in order. ***In re Thompson***, 116 Bankr. 794 (D. Colo. 1990).

A thirty-six month chapter 13 plan pursuant to which a debtor proposed to discharge student loan debts not dischargeable in chapter 7 was proposed in good faith even though the debtor would pay only 4% interest on the student loan obligation. ***In re Selden***, 116 Bankr. 232 (D. Or. 1990).

A counterclaim seeking a declaration that a student loan was not dischargeable and a judgment against the debtor in the amount of the debt was within the bankruptcy court's ancillary jurisdiction

even if the counterclaim was not considered to be a core proceeding. ***In re Kinney***, 114 Bankr. 670 (D. Neb. 1990).

A debtor's obligation pursuant to a loan obtained in order to finance her nondebtor son's college education was not dischargeable absent a showing of hardship. ***In re Hudak***, 113 Bankr. 923 (W.D. Pa. 1990).

An automatic stay applies to preclude a creditor's attempts to collect on a claim that is presumed to be, but not yet determined to be, nondischargeable as an educational loan debt. ***In re Gustafson***, 111 Bankr. 282 (9th Cir. 1990).

The inclusion of student loan obligations in a chapter 13 plan that would not have been dischargeable under chapter 7 does not preclude confirmation, but the size of the proposed repayment is critical in determining whether the debtor's plan was proposed in good faith. ***In re Stewart***, 109 Bankr. 998 (D. Kan. 1990).

The debt for a student loan which first became due more than five years prior to the filing of a chapter 13 petition was automatically included in the debtor's general discharge, even though the debtor had not filed an adversary proceeding to determine the dischargeability of the debt. ***In re Griffin***, 108 Bankr. 717 (W.D. Mo. 1990).

The creditor, an agent of the state Higher Education Loan Program, was in violation of the automatic stay provision of the bankruptcy code since it failed to take affirmative steps to stop a wage attachment after receiving notice of the debtor's bankruptcy. Further, since the creditor failed to take any action during the course of the confirmation process, it was precluded from attacking the debtor's chapter 13 plan. ***In re Clemmons***, 107 Bankr. 488 (D. Del. 1989).

The debtor's student loan was not discharged on the ground of undue hardship where it appeared that he would be able to afford the $50 per month necessary to pay off the loan over the life of a chapter 13 plan. ***In re Doyle***, 106 Bankr. 272 (N.D. Ala. 1989).

The refusal of the State Higher Education Assistance Agency to award a debtor a higher education grant pending notice of her bankruptcy discharge neither constituted a violation of the automatic stay provision of the bankruptcy code nor gave rise to a claim for damages under the provision of the Bankruptcy Code prohibiting discrimination against a debtor. ***In re Saunders***, 105 Bankr. 781 (E.D. Pa. 1989).

The court ruled that in determining whether repayment of student loans would subject a debtor to undue hardship so as to entitle the debtor to be discharged from liability for debt, it is inappropriate to apply the same standard to poverty line wage earners as is applied to high income professionals and other college graduates. ***In re Correll***, 105 Bankr. 302 (W.D. Pa. 1989).

A chapter 13 plan proposing the discharge of a Health Education Assistance Loan upon completion of the plan payments was not confirmed since before a court can discharge such a loan it must find that the obligation is unconscionable. A determination of unconscionability was premature if at least three years of payments remained. ***In re Battrell***, 105 Bankr. 65 (D. Or. 1989).

A debtor failed to establish undue hardship as the basis of dischargeability of scholarship debt incurred as part of a national health service scholarship program where he earned approximately $80,000 per year practicing medicine with a clinic and there was no evidence of his poor health or physical impairment. ***In re Dillingham***, 104 Bankr. 505 (N.D. Ga. 1989).

An attorney who failed to explain to his client how a student loan could be treated differently under chapter 7 and chapter 13 bankruptcy filings and who gave wrong information to the client regarding student loan discharges in bankruptcy was liable for negligently representing his client. ***Swanson v. Sheppard***, 445 N.W.2d 654 (N.D. 1989).

A debtor failed to demonstrate undue hardship to warrant the discharge of her debt, of which over 86% was student loans, even though she was a single mother of four, since she had an income of over $31,000 per year and never made a meaningful effort to repay the loans. ***In re Harris***, 103 Bankr. 79 (W.D.N.Y. 1989).

A chapter 13 plan under which a debtor proposed to treat a consumer loan and an education loan differently did not preclude a finding of good faith. ***In re Dornon***, 103 Bankr. 61 (N.D.N.Y. 1989).

A chapter 13 debtor's Health Education Assistance Loan obligation was not discharged where the debtor was willing and able to make payments of at least $300 per month until her debt of about $9,000 was paid in full. ***In re Quinn***, 102 Bankr. 865 (M.D. Fla. 1989).

There was a suspension of the repayment period on a chapter 7 debtor's student loan obligations so that the loans fell within the five year period during which they are excepted from discharge in bankruptcy. Since that suspension was caused by the debtor's request for a modification of the repayment

period, the student loans were not dischargeable by statute. ***In re Shrylock***, 102 Bankr. 217 (D. Kan. 1989).

A student loan that became due more than five years before the filing of a chapter 7 petition was dischargeable even though the debtor made her last installment payment on the loan within the five years before bankruptcy. ***In re Bunger***, 99 Bankr. 453 (D. Kan. 1989).

The Ohio Student Loan Commission failed to justify the transfer of the claim from the original claimant to itself; therefore, the transfer was denied. ***In re Hoffman***, 98 Bankr. 783 (S.D. Ohio 1989).

The court refused to discharge student loans on the ground of undue hardship where the debtor had excess funds to pay the loans and had good financial prospects for the future. ***In re Coleman***, 98 Bankr. 443 (S.D. Ind. 1989).

A chapter 13 plan was proposed in good faith even though its sole purpose was to discharge a student loan not dischargeable in chapter 7 through the minimum payment of 1% over the three year term of the plan. ***In re Winthurst***, 97 Bankr. 457 (C.D. Ill. 1989).

A promissory note evidencing an educational loan that was signed only by a student's parents was nondischargeable in their chapter 7 bankruptcy. ***In re Hammarstrom***, 95 Bankr. 160 (N.D. Cal. 1989).

Guaranteed student loans were not discharged for chapter 7 debtors on the ground of undue hardship because the wife had finished her student loan education and obtained a full-time position as a registered nurse and the husband, who worked only part-time due to a medical condition, was also educated at student loan expense, and there was no indication that his condition would preclude his full-time employment in the future. ***In re Cardwell***, 95 Bankr. 121 (W.D. Mo. 1989).

Expulsion, Suspension, and Other Disciplinary Actions Relating to Student Conduct

General

The federal government could recover educational costs from an Air Force Academy cadet who resigned in the face of drug charges and was ineligible to fulfill an active duty service commitment. ***United States v. McCrackin***, 736 F. Supp. 107 (D.S.C. 1990).

There was no basis for the court to interfere with the right of a private school to impose sanctions including suspension and probation on a student whose conduct was found to be compatible with cheating. ***Boehm v. University of Pa.***, 573 A.2d 575 (Pa. Super. Ct. 1990).

A college student who had been disciplined for an honors code violation in connection with the use of a prohibited study aid in an examination brought a defamation suit against a fellow student who had disclosed his action to the authorities. The court entered summary judgment in favor of the student making the disclosure on the ground that the disclosure was conditionally privileged. ***Vargo v. Hunt***, 581 A.2d 625 (Pa. Super. Ct. 1990).

A university's determination that a college student had plagiarized was annulled where it was determined that due process entitled her to a statement detailing the factual findings and evidence relied upon by the associate dean in reaching the conclusion that she had plagiarized. ***Kalinsky v. State Univ.***, 557 N.Y.S.2d 577 (App. Div. 1990).

A student's suspension during his senior year was not harsh or excessive where it was based on a finding of academic dishonesty. He was found guilty of cheating on one exam and offered a false excuse for failing to attend a final examination. ***Rauer v. State Univ.***, 552 N.Y.S.2d 983 (App. Div. 1990).

White college student editors of an off-campus newspaper who were suspended as a result of their confrontation with a black professor were not entitled to relief under federal civil rights legislation based on a claim that they were wrongfully suspended from school since their complaint contained insufficient facts to constitute a cause of action. ***Dartmouth Review v. Dartmouth College***, 889 F.2d 13 (1st Cir. 1989).

A former midshipman at the United States Naval Academy was separated from the school after admitting that he was a homosexual. The court ruled against a motion to dismiss on the ground that if the alleged facts were true, he had standing to sue. ***Steffan v. Cheney***, 733 F. Supp. 115 (D.D.C. 1989).

A suspended student was reinstated in good standing where it was determined that the university's failure to adjourn an administrative hearing upon the student's request was an abuse of discretion. Further, his right to a prompt hearing on the charges of disruptive behavior was violated by the university's three-month delay in initiating the process. ***Machosky v. State Univ.***, 546 N.Y.S.2d 513 (Sup. Ct. 1989).

A former student at the state university who had been barred from campus and appealed his conviction for criminal trespass prevailed because the

notice barring his entry to campus was revoked by its own terms when, due to the university's oversight, he was readmitted as a student. ***Bader v. State***, 777 S.W.2d 178 (Tex. Ct. App. 1989).

Law Schools

A university trustee's status as a former law partner of a judge, more than eight years earlier, did not require the judge's recusal. A law school sought to revoke a graduate law student's acceptance into its program after it learned that the student had been disbarred from the practice of law in two other states. ***Katz v. Looney***, 733 F. Supp. 1284 (W.D. Ark. 1990).

A law student brought an action to enjoin a law school from filing charges against her for allegedly cheating on her final exams. The court found that an agency's application of a facially constitutional statute or rule in a manner that violates a party's constitutional rights does not give the party a right to bypass administrative remedies and bring suit. ***Florida Bd. of Regents v. Armesto***, 563 So. 2d 1080 (Fla. Dist. Ct. App. 1990).

Summary judgment was properly ordered against two former law students who were disciplined for honor code violations when the students were unable to present probative evidence to support substantive and procedural due process claims. ***Shuman v. University of Minn. Law School***, 451 N.W.2d 71 (Minn. Ct. App. 1990).

A former law student who was convicted of the false use of a credit card alleged that the university breached its contract with him by failing to follow procedures outlined in the student handbook and honor code. A jury determined that the university had not breached its contract with him and the court affirmed that state law precluded review of the jury's finding. ***Warren v. Drake Univ.***, 886 F.2d 200 (8th Cir. 1989).

A law student who was dismissed for plagiarism sought a memorandum relevant to his case from the state university under the Freedom of Information Act. It was held that since there was insufficient evidence to establish that the memorandum was in the university's possession, relief could not be ordered. ***Easley v. University of Mich.***, 444 N.W.2d 820 (Mich. Ct. App. 1989).

Other Professional Schools

A former student's obesity failed to provided sufficient justification for a college to ask her to withdraw from its nursing program on the ground that she would not be a good model of health for patients. Russell v. Salve Regina College, 890 F.2d 484 (1st Cir. 1989).

Medical students were entitled to an injunction barring their dismissal after they established the likelihood of prevailing on the merits of their case on the ground that they had a protectible contract right to remain in school. The students had been caught cheating and they agreed to a specific penalty. However, the agreement was allegedly breached when the school thereafter assigned them grades of "F" and intended to dismiss them from school for academic reasons. ***James v. Wall***, 783 S.W.2d 615 (Tex. Ct. App. 1989).

A student terminated from a nuclear medicine technology program was not entitled to recover in negligence based on the school's alleged violation of an immediate supervision statute. ***Chevlin v. Los Angeles Community College Dist.***, 260 Cal. Rptr. 628 (Ct. App. 1989).

A theological seminary attempted to dismiss a student as a result of his alleged marital difficulties and later refused to confer his degree. The court ruled that it had jurisdiction to determine whether the school violated the due process procedure in its student handbook since it was a dispute over contracts and not religion. ***Babcock v. New Orleans Baptist Theological Seminary***, 554 So. 2d 90 (La. Ct. App. 1989).

Academic Expulsion, Suspension and Probation

General

A former graduate student who was afflicted with cerebral palsy was dismissed from a Ph.D. program because she failed a qualifying exam. Her suit alleging that she was discriminated against because of her physical handicap was dismissed for failure to offer any evidence of discriminatory intent. ***Villanueva v. Columbia Univ.***, 746 F. Supp. 297 (S.D.N.Y. 1990).

An action brought by a former graduate student who alleged that her expulsion was a violation of her civil rights was dismissed on the grounds that her suit was barred by a one year statute of limitations. She could not evade the prescriptive period by contending that the university's actions constituted a continuing tort. ***Davis v. Louisiana State Univ.***, 876 F.2d 412 (5th Cir. 1989).

A college did not act arbitrarily or irrationally when it dismissed a student for her failure to maintain the required 3.0 grade point average or when it refused to reopen the matter of her dismissal. She had plagarized the work of another and was required

to drop the course with a failing grade, which decreased her grade point average to below the required minimum to remain in the program, and she was unable to raise her average close enough to the level that would have allowed her to request a waiver from the 3.0 requirement. ***Braham v. Brown***, 548 N.Y.S.2d 440 (App. Div. 1990).

A university sought an injunction to prohibit the State Department of Human Rights from proceeding with a civil rights investigation of a student's allegation of racial discrimination concerning his suspension or dismissal from an academic program. The court ruled that since the Department's entry of appearance and answer had been filed in a timely manner, a default judgment preventing the Department from continuing its investigation was improperly entered. ***Board of Trustees v. Department of Human Rights***, 546 N.E.2d 1039 (Ill. App. Ct. 1989).

Law Schools

A law student's dismissal for academic deficiencies was beyond the scope of judicial review in the absence of demonstrated bad faith, arbitrariness, capriciousness, irrationality, or constitutional or statutory violations. ***Susan M. v. New York Law School***, 557 N.Y.S.2d 297 (1990).

A *pro se* litigant, who alleged that his dismissal from law school was due to his race and active participation in a black student's association and not because of his admittedly poor academic record, was entitled to amend his civil rights complaint to allege a violation of the title VI prohibition against racial discrimination by any program receiving federal funds. ***Radcliff v. Landau***, 883 F.2d 1481 (9th Cir. 1989).

A law school student who was dismissed for his failure to maintain a minimum grade point average was not entitled to reinstatement or other relief on the ground that the readmission committee did not include student representatives even though the school's advertising brochures indicated that students were on all committees. The court ruled that students were properly excluded from the readmission committee since they would have had undesirable access to other students' files. ***Gold v. University of Bridgeport School of Law***, 562 A.2d 570 (Conn. App. Ct. 1989).

Other Professional Schools

A medical student who was dismissed due to poor academic performance filed a civil rights suit against the university. The suit was barred by the eleventh amendment. ***Cowan v. University of Louisville School of Medicine***, 900 F.2d 936 (6th Cir. 1990).

A third year medical student who was dismissed for poor clinical performance brought a civil rights suit against the school. She was not entitled to a preliminary injunction reinstating her as a student prior to a hearing on the merits of on-going state administrative and judicial review proceedings. ***Lunde v. Helms***, 898 F.2d 1343 (8th Cir. 1990).

Judicial review of a university's decision to dismiss a student due to his inadequate academic performance is limited to a determination of whether the university has acted in a manner that is arbitrary and capricious, in bad faith, or contrary to constitution or statute. ***Garg v. Albert Einstein College of Medicine***, 747 F. Supp. 231 (S.D.N.Y. 1990).

A former nursing student's action challenging the constitutionality of a policy requiring the dismissal of nursing students and denying their readmission to a state nursing program if they have received two "D" grades or below during their programs was dismissed because she was unable to allege that she was treated differently from others in her class. ***Lilly v. Smith***, 790 S.W.2d 539 (Tenn. Ct. App. 1990).

There was no violation of a medical school residency trainee's due process rights even though he was not clearly advised of his impending termination, since thirty days prior to his dismissal from the residency program he was informed that his performance was unsatisfactory but he failed to comply with the terms of a probationary type remedial program. ***Dillingham v. University of Colo.***, 790 P.2d 851 (Colo. Ct. App. 1990).

The dismissal of a medical school student for poor academic and clinical performance was not arbitrary and capricious since a review of his failing grades resulted in a review of his overall academic record and revealed that he had not achieved the grades necessary for him to continue into his fourth year of medical school. ***Chusid v. Albany Medical College***, 550 N.Y.S.2d 507 (App. Div. 1990).

A dental resident's termination from a general practice residency program due to his academically deficient dental practice performance did not violate his due process rights because he: (1) received frequent and detailed notice of his academic problems and potential dismissal; (2) was given the right to a hearing before an impartial five member committee; (3) was provided a detailed summary of the charges and witnesses against him; (4) had counsel present at the hearing; and (5) was allowed to appeal the committee's decision. ***Davis v. Mann***, 882 F.2d 967 (5th Cir. 1989).

A black medical student who was dismissed for an allegedly deficient academic record was unable to assert actionable claims under federal civil rights statutes against the medical college. ***Lewis v. Russe***, 713 F. Supp. 1227 (N.D. Ill. 1989).

An Egyptian medical pathology resident dismissed due to her unsatisfactory performance on autopsy rounds was not entitled to relief in a federal civil rights action because, within the process of her termination, there was accord and satisfaction of all of the claims arising out of her termination. She had entered into a settlement agreement under which the letter of her termination was expunged in exchange for the withdrawal of her appeals action. Further, she was allowed to complete outstanding assignments, she received a certificate of residency training, and she resigned as of a specified date. ***Assaad-Faltas v. University of Ark.***, 708 F. Supp. 1026 (E.D. Ark. 1989).

A participant in the university's psychiatry residency program was a student and not an employee for the purposes of a decision to dismiss him for academic reasons even though his tenure at the university exhibited many of the qualities of an employee. Thus, he was not treated arbitrarily since he was afforded all substantive and procedural due process protections owing to a student, was fully aware of the faculty's dissatisfaction with his performance, and was terminated from the program only after he had been given ample opportunity to improve. ***Ross v. University of Minn.***, 439 N.W.2d 28 (Minn. Ct. App. 1989).

A dismissed medical student who received five failing grades and was consistently ranked near the bottom of his class was afforded all of the process that was due prior to his academic dismissal since the university notified him of his academic evaluation and recommendations of dismissal, gave him a rehearing before the evaluating committee, and permitted an appeal to the dean. ***Eiland v. Wolf***, 764 S.W.2d 827 (Tex. Ct. App. 1989).

Constitutional and Civil Rights of Students

General

The court upheld a ruling that the Family Educational Rights and Privacy Act does not provide the means by which a university student may obtain information on how his grade was assigned. At most, he was only entitled to know whether it was recorded accurately in his records. ***Tarka v. Cunningham***, 917 F.2d 890 (5th Cir. 1990).

A medical student who was dismissed due to poor academic performance had his civil rights suit against the university barred by the eleventh amendment. Also, he was not deprived of his liberty interest in his reputation when an associate dean and the dean disclosed a letter from his psychiatrist since there was no evidence that they acted in anything other than an official capacity. ***Cowan v. University of Louisville School of Medicine***, 900 F.2d 936 (6th Cir. 1990).

An action seeking damages for educational malpractice was dismissed on the ground that such a claim is not cognizable in a section 1983 action. ***Bishop v. Indiana Technical Vocational College***, 742 F. Supp. 524 (N.D. Ind. 1990).

A purportedly private eating club open only to male students shared a symbiotic relationship with a university. The club, therefore, lost its private character and became subject to laws against discrimination. ***Frank v. Ivy Club***, 576 A.2d 241 (N.J. 1990).

An individual whose application for graduate school was rejected but nevertheless audited classes at the university was found not to be a student within the meaning of the Family Educational Rights and Privacy Act and so could not allege a violation of section 1983 on the basis that he was deprived of his rights under the Act. ***Tarka v. Franklin***, 891 F.2d 102 (5th Cir. 1989).

White college student editors of an off-campus newspaper, who were suspended as a result of their confrontation with a black professor, were not entitled to relief under federal civil rights legislation based on a claim that they were wrongfully suspended from school since their complaint contained insufficient facts to constitute a cause of action. ***Dartmouth Review v. Dartmouth College***, 889 F.2d 13 (1st Cir. 1989).

A former student challenged the constitutionality of notice regarding her defaulted student loan being offset against her income tax refund. The court ruled that since the Department of Education did not cause the loss of her income tax refund, she lacked standing to challenge the constitutionality of the notice. ***Jones v. Cavazos***, 889 F.2d 1043 (11th Cir. 1989).

An action brought by a former graduate student who alleged that her expulsion was a violation of her civil rights was dismissed on the grounds that her suit was barred by a one year statute of limitations. Further, she could not evade the prescriptive period by contending that the university's actions constituted a continuing tort. ***Davis v. Louisiana State Univ.***, 876 F.2d 412 (5th Cir. 1989).

An attorneys' fee award from a civil rights action could be made to a law school clinical program staffed by law students who, overseen by a faculty member, successfully represented a client. ***Proulx v. Citibank***, 709 F. Supp. 396 (S.D.N.Y. 1989).

A graduate student who was arrested due to his disruptive behavior in a campus protest alleged that the statute prohibiting such activity was impermissably vague and overbroad in violation of the fourteenth amendment. The court ruled that his motion to dismiss was too general to apprise the trial court of the nature of his complaint and so his argument under the federal constitution was waived. ***Wilson v. State***, 777 S.W.2d 823 (Tex. Ct. App. 1989).

Where a law student dismissed for plagiarism sought a memorandum relevant to his case from the state university under the Freedom of Information Act, it was held that since there was insufficient evidence to establish that the memorandum was in the University's possession, relief could not be ordered. ***Easley v. University of Mich.***, 444 N.W.2d 820 (Mich. Ct. App. 1989).

Discrimination

General

A former medical student who had been dismissed due to academic deficiencies sued the medical college and school officials pursuant to federal civil rights laws alleging that he was deprived of an equal educational opportunity. His suit was barred under the doctrine of *res judicata* since a state court had dismissed his complaint for failure to state a cause of action. ***Garg v. Albert Einstein College of Medicine***, 747 F. Supp. 231 (S.D.N.Y. 1990).

A medical doctor who was denied participation in a loan forgiveness program on the ground that she attended a foreign medical school brought a claim alleging that she was denied equal protection. The claim was dismissed because she was unable to establish that the statute on its face treated similarly situated groups differently or that the rule was enforced in a discriminatory manner. ***Van Bellingham v. Department of Educ.***, 555 N.Y.S.2d 571 (Sup. Ct. 1990).

A former nursing student's action challenging the constitutionality of a policy requiring the dismissal of nursing students and denying their readmission to a state nursing program if they have received two "D" grades or below during their programs was dismissed since she was unable to allege that she was treated differently from others in her class. ***Lilly v. Smith***, 790 S.W.2d 539 (Tenn. Ct. App. 1990).

A former midshipman at the Naval Academy who was separated from the school after his admission of his homosexuality was not excused from answering a deposition question about his avowed status as a homosexual on fifth amendment grounds. Further, his refusal to answer the question required a dismissal of the case with prejudice. ***Steffan v. Cheney***, 733 F. Supp. 121 (D.D.C. 1989).

An Egyptian medical pathology resident dismissed due to her unsatisfactory performance on autopsy rounds was not entitled to relief in a federal civil rights action because within the process of her termination there was accord and satisfaction of all of the claims arising out of her termination. She entered into a settlement agreement under which the letter of her termination was expunged in exchange for the withdrawal of her appeals action. Further, she was allowed to complete outstanding assignments, she received a certificate of residency training, and she resigned as of a specified date. ***Assaad-Faltas v. University of Ark.***, 708 F. Supp. 1026 (E.D. Ark. 1989).

Race

A student who brought a civil rights action against a university alleging that he was harassed by campus police and other personnel on account of his race and his exercise of rights to free speech, religion, and association was entitled to a due process hearing prior to the trial court's declaration of incompetency and appointment of a guardian *ad litem*. ***Thomas v. Humfield***, 916 F.2d 1032 (5th Cir. 1990).

The receipt of federal financial assistance by any student or portion of a school subjected a law school to the provisions in title VI of the Civil Rights Act of 1964 prohibiting racial discrimination in any program receiving federal funds. ***Radcliff v. Landau***, 883 F.2d 1481 (9th Cir. 1989).

An engineering doctoral student from Nigeria who alleged discrimination by reason of race and ethnicity in the administration of his qualifying examination had his claim dismissed on the ground that it was time barred. ***Maduakolam v. Columbia Univ.***, 866 F.2d 53 (2d Cir. 1989).

In a graduate student's challenge to the constitutionality of the university's policy on discrimination and discriminatory harassment which prohibited stigmatizing or victimizing individuals or groups based on race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap or Vietnam-era status, the court ruled that it was both overbroad on its face and as applied and so vague that its enforcement would violate the due process clause of the fourteenth amendment. ***Doe v. University of Mich.***, 721 F. Supp. 852 (E.D. Mich. 1989).

An unsuccessful medical school applicant brought a civil rights action against the university alleging that he was rejected because of his race. The court ruled that he was unable to bring suit under the fifth, eleventh, or fourteenth amendments and that he failed to make a sufficient showing to entitle him to injunctive relief under title VI. ***Baker v. Board of Regents***, 721 F. Supp. 270 (D. Kan. 1989).

A black medical student who was dismissed for an allegedly deficient academic record could not maintain federal civil rights violations against the medical college due to his inability to state actionable claims under the appropriate federal statutes. ***Lewis v. Russe***, 713 F. Supp. 1227 (N.D. Ill. 1989).

Sex

A female surgery intern at the university's medical school brought an action against the university for sexual harassment and discrimination in violation of title IX. The university was entitled to eleventh amendment immunity from the claim for damages but not from claims for injunctive relief. ***Lipsett v. University of P.R.***, 745 F. Supp. 793 (D.P.R. 1990).

In an action brought by a female student based on unwanted sexual advances by a professor, the court ruled that her allegations failed to state a claim for a violation of title IX or to identify a protected constitutional or federal substantive due process right. ***Bougher v. University of Pittsburgh***, 713 F. Supp. 139 (W.D. Pa. 1989).

An action was brought by high school students and two organizations challenging the state's exclusive reliance on Scholastic Aptitude Test scores in awarding merit (college) scholarship awards. The plaintiffs alleged that to do so discriminated against female students in violation of the equal protection clause of the fourteenth amendment. They were granted class certification and the suit was permitted to proceed. ***Sharif by Salahuddin v. New York State Educ. Dep't***, 127 F.R.D. 84 (S.D.N.Y. 1989).

Handicapped

Pursuant to the Rehabilitation Act of 1973, a university was enjoined from denying auxiliary aid to handicapped students on the basis that a student failed to show a need for financial assistance. ***United States v. Board of Trustees***, 908 F.2d 740 (11th Cir. 1990).

A former graduate student afflicted with cerebral palsy sued the university claiming that she was discriminated against on the basis of her physical handicap when she was terminated from a Ph.D. program despite the fact that she failed the qualifying exam. Her suit was dismissed since she was unable to offer any evidence of discriminatory intent. ***Villanueva v. Columbia Univ.***, 746 F. Supp. 297 (S.D.N.Y. 1990).

A student brought suit against a university alleging wrongful disclosure of information that he had tested positive for Acquired Immune Deficiency Syndrome (AIDS) antibodies. It was held that his claims for invasion of privacy and intentional infliction of emotional distress were time barred and that only equitable damages were available under the Rehabilitation Act. ***Doe v. Southeastern Univ.***, 732 F. Supp. 7 (D.D.C. 1990).

A suit brought by a handicapped student against the university under the Rehabilitation Act of 1973 alleging that he was overcharged for student housing was decided in favor of the university because the student failed to show that he was discriminated against when he was assigned a double room in an undergraduate dormitory. ***Fleming v. New York Univ.***, 865 F.2d 478 (2d Cir. 1989).

On remand from the United States Supreme Court, a Washington court found that the denial of financial assistance to a visually handicapped student to enable him to attend a private Bible college violated neither the free exercise clause of the first amendment nor the equal protection clause of the fourteenth amendment. ***Witters v. State Comm'n for the Blind***, 771 P.2d 1119 (Wash. 1989).

Religion

A former doctoral student in physics filed a civil rights action because of discrimination based on his religion. The court held that evidence supported the finding that his termination was attributable to his lack of research ability rather than a result of any religious discrimination on the part of the student's Ph.D. committee. ***Al-Zubaidi v. Ijaz***, 917 F.2d 1347 (4th Cir. 1990).

First Amendment

General

The termination of a legal services office was the termination of a subsidy that did not violate students' first amendment rights, even if the termination was solely in response to the office's suits against the university and its officers. ***Student Gov't Ass'n v. Board of Trustees***, 868 F.2d 473 (1st Cir. 1989).

The first amendment does not require a college to fund or recognize an alumni group. ***Ad Hoc Comm. v. Bernard M. Baruch College***, 726 F. Supp. 522 (S.D.N.Y. 1989).

Freedom of Speech

A community college's conduct in prohibiting publication of an advertisement for a nude dancing club in a student run newspaper violated the first amendment rights of the newspaper's editor-in-chief because the college's regulation of advertising was not narrowly tailored to serve its interests in not fostering the degradation of women and underage drinking. ***Lueth v. St. Clair County Community College***, 732 F. Supp. 1410 (E.D. Mich. 1990).

The Supreme Court reversed and remanded a ruling of the Second Circuit when it held that governmental restrictions on commercial speech need not be the absolute least restrictive means to achieve the desired end. It also found that the students' claim that the university regulation restricting commercial speech in dormitories was not ripe for resolution since the as-applied challenge should ordinarily be decided before an overbreadth claim for reasons relating to the efficiency of the courts and because neither of the courts below considered the students' as-applied challenge under the proper legal standards. ***Board of Trustees v. Fox***, 109 S. Ct. 3028 (1990).

Regulations which restricted distribution of campaign literature to three days prior to student elections (only at residences or outside of campus buildings), prohibited the distribution of such literature on election day, and limited open forum debates to election week did not violate students' first amendment rights since the regulations were reasonably related to the university's legitimate interest in minimizing the disruptive effect of on-campus electioneering. ***Alabama Student Party v. Student Gov't Ass'n***, 867 F.2d 1344 (11th Cir. 1989).

A college professor brought a libel suit seeking damages arising out of the publication of letters to the editor in a student newspaper that were critical of his abilities as a teacher. Letters to the editor were expressions of opinions and not actionable under libel laws because of the constitutional protection accorded to the free expression of ideas even if they were false and libelous and no matter how pejorative or pernicious they were. ***Epstein v. Board of Trustees***, 543 N.Y.S.2d 691 (App. Div. 1989).

A college administrator's defamation suit was dismissed because the court ruled that the seven page "spoof" insert in the student newspaper which contained no serious articles could not have reasonably been understood as a factual statement. ***Walko v. Kean College***, 561 A.2d 680 (N.J. Super. Ct. Law Div. 1988).

Due Process

A third year medical student who was dismissed for poor clinical performance brought a civil rights suit against the school. She was not entitled to a preliminary injunction reinstating her as a student prior to a hearing on the merits of on-going state administrative and judicial review proceedings. ***Lunde v. Helms***, 898 F.2d 1343 (8th Cir. 1990).

A student had a constitutional right to due process entitling her to a statement detailing the factual findings and evidence relied upon by an associate dean in reaching the conclusion that she had plagiarized a final paper. ***Kalinsky v. State Univ.***, 557 N.Y.S.2d 577 (App. Div. 1990).

A law student brought an action to enjoin a law school from filing charges against her for allegedly cheating on her final exams. The court found that an agency's application of a facially constitutional statute or rule in a manner that violates a party's constitutional rights does not give the party a right to bypass administrative remedies and bring suit. ***Florida Bd. of Regents v. Armesto***, 563 So. 2d 1080 (Fla. Dist. Ct. App. 1990).

There was no violation of a medical school residency trainee's due process rights even though he was not clearly advised of his impending termination since thirty days prior to his dismissal from the residency program he was informed that his performance was unsatisfactory but he failed to comply with the terms of a probationary type remedial program. ***Dillingham v. University of Colo.***, 790 P.2d 851 (Colo. Ct. App. 1990).

Summary judgment was properly ordered against two former law students who were disciplined for honor code violations since the students were unable to present probative evidence to support substantive and procedural due process claims. ***Shuman v. University of Minn. Law School***, 451 N.W.2d 71 (Minn. Ct. App. 1990).

A dental resident's termination from a general practice residency program due to his academically deficient dental practice performance did not violate his fourteenth amendment due process rights since he: (1) received frequent and detailed notice of his academic problems and potential dismissal; (2) was given the right to a hearing before an impartial five member committee; (3) was given a detailed summary of the charges and witnesses against him; (4) had counsel present at the hearing; and (5) was allowed to appeal the committee's decision. ***Davis v. Mann***, 882 F.2d 967 (5th Cir. 1989).

A university did not deprive an out-of-state law student of his due process rights in its decision to deny him resident status when it took his initial non-resident status into consideration along with his continued status as a student during his residency. ***DeCecco v. Board of Regents***, 442 N.W.2d 585 (Wis. Ct. App. 1989).

A dismissed medical student who received five failing grades and was consistently ranked near the bottom of his class was afforded all of the process that was due prior to his academic dismissal because the university: (1) notified him of his academic evaluation and recommendations of dismissal; (2) gave him a rehearing before the evaluating committee; and (3) permitted an appeal to the dean. ***Eiland v. Wolf***, 764 S.W.2d 827 (Tex. Ct. App. 1989).

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LIABILITY ON CAMPUS

ELEVENTH Series, Number 2

Prepared by Steve W. Batson, Vice President for Planning and Institutional Advancement, West Virginia State College

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Contract

General

A contract did not exist where an administrator entered into a contract with a bank without authority. ***Board of Trustees of State Inst. of Higher Learning v. Peoples Bank of Miss.***, 538 So. 2d 361 (Miss. 1989).

A fraud and breach of contract claim could proceed in a state court despite provisions of the Federal Arbitration Act in a contract containing stipulations which provided that the contract would be controlled by the laws of "the place where the project is located." ***Volt Information Sciences, Inc. v. Board of Trustees***, 109 S. Ct. 1248 (1989).

A university rejected a bid on property from one individual and accepted another. However, a claim of fraud from the unsuccessful bidder lacked evidentiary support and no contractual agreement existed. ***Keller v. Security Fed. Sav. and Loan***, 555 So. 2d 151 (Ala. 1989).

The Alabama Board of Adjustments had sole jurisdiction over contract disputes with a public university. ***Alabama State Univ. v. State Bd. of Adjustment***, 541 So. 2d 567 (Ala. Civ. App. 1989).

Bids submitted by private television companies to become a part of the network for the broadcast of a school's athletic events were not subject to the Freedom of Information Act. ***KMEG Television, Inc. v. Iowa State Bd. of Regents***, 440 N.W.2d 382 (Iowa 1989).

A university must provide competitive bidding procedures when purchasing coal. A provision requiring the exclusive consumption of coal produced in state was unconstitutional. ***Lynden Transport, Inc. v. State***, 768 P.2d 475 (Wash. 1989).

A zoning board was required to consider the effects of the campus plan on the surrounding neighborhood, and the board's approval plan had deleted a requirement that the university had to locate off-campus leased space in commercial districts. ***Levy v. District of Columbia Bd. of Zoning Adjustment***, 570 A.2d 739 (D.C. 1990).

Construction Contracts

The board of regents did not waive its eleventh amendment immunity by entering into a building contract with a private party. ***Romco Ltd. v. Outdoor Aluminum, Inc.***, 725 F. Supp. 1033 (W.D. Wis. 1989).

A university was prohibited from litigating a faulty construction case since the four-year statute of limitations had been exceeded. ***Board of Regents v. Lueder Constr. Co.***, 433 N.W.2d 485 (Neb. 1988).

A contractor was barred by sovereign immunity from litigating a case in which he claimed that the acts and omissions of the state caused an untimely completion of a construction contract. ***Bolton Corp. v. State***, 383 S.E.2d 671 (N.C. Ct. App. 1989).

A statute giving municipalities the authority to regulate parking and dimensional requirements of buildings owned by religious and educational institutions did not apply to a facility constructed by a state college building authority. ***Inspector of Bldgs. v. Salem State College***, 546 N.E.2d 388 (Mass. App. Ct. 1989).

A university was entitled to attorneys' fees accrued during both litigation and arbitration of a contract dispute with a building contractor. ***B&H Construction & Supply Co. v. District Bd. of Trustees***, 542 So. 2d 382 (Fla. Dist. Ct. App. 1989).

A subcontractor obtained costs for the repair of window wall panels damaged in a university building due to faulty construction. ***Northeastern Plate Glass Corp. v. Murray Walter, Inc.***, 537 N.Y.S.2d 657 (App. Div. 1989).

Regarding a suit arising from the construction of a student center, the state is exempt from the statute of limitations for damages in the construction of higher education facilities. ***New Jersey Educ. Facility Auth. v. Conditioning Co.***, 567 A.2d 1013 (N.J. Super. Ct. App. Div. 1989).

Personal Injury

General

Entry by a police officer was consensual and did not violate any expectation of privacy on the part of the fraternity when a female police officer entered a fraternity party and gave assisting officers a signal to arrest minors for purchasing beer and provided evidence in the prosecution of the fraternity. ***Commonwealth v. Tau Kappa Epsilon***, 560 A.2d 786 (Pa. Super. Ct. 1989).

The plaintiff alleged infliction of emotional distress caused by the unsolicited showing of a pornographic video. The defendant prevailed as it proved through expert testimony that plaintiff was emotionally disturbed before that incident. ***Young v. St. Louis Univ.***, 773 S.W.2d 143 (Mo. Ct. App. 1989).

A faculty member was not immune from tort liability under the Governmental Claims Act since genuine issues of material fact existed as to whether he was acting within the scope of his duties when he ran at a female student, yelled, shook his fist, and allegedly inflicted emotional distress. ***Jung-Leoncynska v. Steup***, 782 P.2d 578 (Wyo. 1989).

A clinic and its doctors did not breach the patient-client privilege with an AIDS patient when they allowed news media into the waiting room of the clinic. ***Anderson v. Strong Memorial Hosp.***, 542 N.Y.S.2d 96 (App. Div. 1989).

A music professor was liable for battery, rather than negligent contact. He approached a female student from behind and, without an intent to injure, moved his fingers on her shoulder simulating the striking of a piano keyboard. The university was not liable. ***White v. University of Idaho***, 768 P.2d 827 (Idaho Ct. App. 1989).

A woman was entitled to recovery under the uninsured motorist provisions of her husband's insurance policy when she was injured while riding in a university-owned vehicle which was under-insured. ***State Farm Auto. Ins. Co. v. Greer***, 777 P.2d 941 (Okla. 1989).

An AIDS patient was denied access to the identification of a blood donor whose infected blood caused his illness since suit was not brought against the donor. ***Doe v. University of Cincinnati***, 538 N.E.2d 419 (Ohio Ct. App. 1988).

Failure of Supervision/Instruction

A nonprofit job training organization, as an agency of the state, enjoyed sovereign immunity from a suit by a student who severed his thumb while operating a table saw without proper instruction or permission. ***Riggs v. Bell***, 564 So. 2d 882 (Ala. 1990).

The university met its duty of care when a student was injured in a voluntary laboratory experiment requiring him to run one mile. ***Turner v. Rush Medical College***, 537 N.E.2d 890 (Ill. App. Ct. 1989).

The college had taken reasonable care during a touch football game in which a freshman injured his knee. ***Drew v. State***, 536 N.Y.S.2d 252 (App. Div. 1989).

A university was not liable for the abduction and rape of a female who used the parking lot of the institution as she transported her child to a private day care facility adjacent to the parking lot. ***Figueroa v. Evangelical Covenant Church***, 698 F. Supp. 1408 (N.D. Ill. 1988), *reh'g denied* 879 F.2d 1427 (7th Cir. 1989).

A part-time student was seriously injured when her husband shot her after she returned to her car from evening class. The university was immune under the state tort claims act and did not owe a special duty to the student to protect her. ***Klobuchar v. Purdue Univ.***, 553 N.E.2d 169 (Ind. Ct. App. 1990).

A student, who assaulted another student at a beer party in a residence hall, was not a "dangerous condition of the property" for which the university was liable. ***Crow v. State***, 271 Cal. Rptr. 349 (Ct. App. 1990).

A university was not liable for the drowning of a handicapped student who was participating in a recreation program for exceptional citizens since the case did not give rise to the "dangerous conditions of realty" exception to governmental immunity. ***Musheno v. Lock Haven Univ.***, 574 A.2d 129 (Pa. Commw. Ct. 1990).

Parents whose son died in a residence hall fire could not recover punitive damages under Delaware's wrongful death statute, but could seek damages under the state's survival statutes for pain and suffering incurred by their son. Minor students who had been drinking set the smoke bomb which started the fatal fire, but the college's failure to institute its own express prohibition regarding alcohol did not demonstrate recklessness which could support an award of punitive damages. The students who initiated the fire acted with sufficient recklessness to support an award of punitive damages against them. ***Sterner v. Wesley College***, 747 F. Supp. 263 (D. Del. 1990).

A university was not negligent in the supervision of a minor high school student who resided on-campus during a summer university program. He was injured on a motorcycle after consuming alcohol at a party on-campus. ***Graham v. Montana State Univ.***, 767 P.2d 301 (Mont. 1988).

A prisoner, on furlough to the college campus, was found contributorily negligent when he was injured using a masonry saw while the instructor was absent from the shop. ***Clements v. Moncrief***, 549 So. 2d 479 (Ala. 1989).

A bicyclist who was injured when he ran into the crossbeam under a stadium failed to show that the institution should have posted warning signs. ***Poerio v. State***, 534 N.Y.S.2d 459 (App. Div. 1988).

An overweight Grenada medical student, who died during a 2.5-mile road race, assumed the risk when he voluntarily entered the race knowing of his poor health. ***Gehling v. St. George's Univ. School of Medicine***, 705 F. Supp. 761 (E.D.N.Y. 1989).

In the death of a scuba diver, the court ruled that the university's indoor swimming pool did not come under the recreation land use exemption from liability. ***Cassio v. Creighton Univ.***, 446 N.W.2d 704 (Neb. 1989).

Neither a fraternity nor a university had a duty to protect a minor student from the consequences of his actions, i.e., the harm of being incarcerated, after he killed another student following both students illegal consumption of alcohol and marijuana at a fraternity party. ***Van Mastrigt v. Delta Tau Delta***, 573 A.2d 1128 (Pa. Super. Ct. 1990).

A university was not negligent in its advice and guidance concerning a master's degree program. The student was delayed in graduating and suffered the loss of wages due to a delayed entry into the job market. ***Smith v. Ohio State Univ.***, 557 N.E.2d 857 (Ohio Ct. Cl. 1990).

Neither the university nor the national fraternity were liable for damage to a student's property resulting from a fire which was started by an intoxicated minor who attended parties hosted by the student's dormitory and local fraternity chapter. Social host liability did not apply since neither the university nor the fraternity was involved in purchasing or supplying alcoholic beverages. ***Alumni Ass'n v. Sullivan***, 572 A.2d 1209 (Pa. 1990).

Defective Facilities/Equipment

An owner and operator was liable for injuries sustained by a worker who fell through a skylight; required safety devices were not installed. ***Wieszchowski v. Skidmore College***, 537 N.Y.S.2d 911 (App. Div. 1989).

An alleged defective calorimeter fell and injured the installer. However, under the principle of judicial comity, an Indiana university was immune from a products liability action in Illinois. ***Schoeberlein v. Purdue Univ.***, 544 N.E.2d 283 (Ill. 1989).

A university brought a strict liability action regarding asbestos installed in its buildings. The institution filed suit, however, after the expiration of the four-year statute of limitations. ***Corporation of Mercer Univ. v. National Gypsum Co.***, 877 F.2d 35 (11th Cir. 1989).

A student was injured by a window which came down upon him as he was attempting to close it. The university was not liable for those injuries. ***Siegel v. Hofstra Univ.***, 545 N.Y.S.2d 935 (App. Div. 1989).

A university clinic was not liable for injuries sustained by a patient on a parking deck owned and operated by the institution since the plaintiff failed to show how that the injury was caused by a hole in the deck. ***Sorrells v. Emory Hosp.***, 391 S.E.2d 10 (Ga. Ct. App. 1990).

A vending company employee slipped on ice-covered gravel in a university parking lot but the institution was not liable for the injuries which resulted from the natural accumulation of ice and snow. ***Coletta v. University of Akron***, 550 N.E.2d 510 (Ohio Ct. App. 1988).

A student who slipped and fell on the residence hall steps failed to show that the defect was substantial and not of the type that passersby commonly encounter. ***Baldauf v. Kent State Univ.***, 550 N.E.2d 517 (Ohio Ct. App. 1988).

A student was injured as he put his hand and arm through a glass door in the dormitory. A statute of repose which prevented the accrual of damages against the architects and contractors more than ten years after the completion of their services, was constitutional. ***Sedar v. Knowlton Constr. Co.***, 551 N.E.2d 938 (Ohio 1990).

A student failed to overcome a public institution's sovereign immunity in a claim of negligence. She slipped on ice in a parking lot which was not immediately adjacent to the school facility and, thus, did not fall within the public building exception. ***Abrams v. Schoolcraft Community College***, 444 N.W.2d 533 (Mich. Ct. App. 1989).

Neither a university nor a security officer was entitled to governmental immunity in a student's death by hanging since an exposed heating device in a holding cell was considered to be a defect in a public building for purposes of the public building exception to governmental immunity. Further, the decision of the officer not to remove the belt was ministerial rather than discretionary. ***Hickey v. Zezulka***, 443 N.W.2d 180 (Mich. Ct. App. 1989).

A student who was injured in an intramural football game raised a genuine issue of fact for a jury to decide whether the hole in the playing field was typical of the terrain upon which football is normally played. ***Henig v. Hofstra Univ.***, 553 N.Y.S.2d 479 (App. Div. 1990).

Workers' Compensation

General

A participant in the federal foster grandparents program who suffered a back injury could be considered a loaned servant to the state college under the Workman's Compensation Act. ***Murray State College v. Akins***, 794 P.2d 1218 (Okla. Ct. App. 1990).

The institution was not liable for the employee's educational program since it went beyond the provisions of necessary vocational rehabilitation training services required under Virginia law. ***Yeargain v. Daniel Int'l***, 384 S.E.2d 114 (Va. Ct. App. 1989).

Claimant who was originally awarded compensation for a work-related injury was subsequently awarded additional compensation from a special fund when it was discovered he suffered from a permanent disability. ***De Mayo v. Rensselaer Polytech Inst.***, 548 N.Y.S.2d 630 (1989).

Workers' compensation was not an exclusive remedy against the university if the supervisor committed an intentional tort. A genuine issue of material fact existed precluding summary judgment for the supervisor. ***King v. Brooks***, 788 P.2d 707 (Alaska 1990).

A state university employee who suffered from an occupational disease confined his work search to university jobs after termination. Further, he presented no medical evidence of inability to work or evidence of a good-faith work search and, therefore, was not eligible for temporary total disability benefits. ***University of Fla. v. Stone***, 553 So. 2d 359 (Fla. Dist. Ct. App. 1989).

An injured worker could receive temporary disability benefits until he actually began a vocational rehabilitation program. ***Northeastern Jr. College v. Kenyon***, 783 P.2d 853 (Colo. 1989).

A workers' compensation board and the hearing division lacked jurisdiction to consider whether penalties and attorneys' fees were warranted due to a delay in payment to the worker's health care provider. ***Ashley v. University of Or.***, 787 P.2d 506 (Or. Ct. App. 1990).

Work as Proximate Cause

A husband's suicide did not entitle his wife to workers' compensation death benefits because of alleged hostile working environment. Death must be caused by an accident and there was no evidence of mental derangement or causation. ***Holford v. Regents of Univ. of Cal.***, 796 P.2d 259 (N.M. Ct. App. 1990).

A worker was eligible for workers' compensation after suffering a heart attack induced by workplace stress. ***Decker v. Oklahoma State Univ.***, 766 P.2d 1371 (Okla. 1988).

The court held that appropriate medical benefits had been awarded to a woman who sought treatment for workplace stress-induced emotional problems. ***Ruybal v. University of Colo. Health Sciences Center***, 768 P.2d 1259 (Colo. Ct. App. 1988).

Plaintiff's illness was due to excessive alcohol consumption and was not work-related. ***Bird v. Southeast Mo. State Univ.***, 761 S.W.2d 746 (Mo. Ct. App. 1988).

A professor was not negligent in his operation of a van during the scope of employment and was, therefore, not liable for a graduate assistant's injuries. The student's remedy would be found under workers' compensation laws. ***Konz v. Ehly***, 451 N.W.2d 504 (Iowa Ct. App. 1989).

A student was injured as a member of the volunteer fire department sponsored by the university. Workers' compensation coverage was invalid since it was made by the institution and not the fire department. This case was remanded for consideration of a negligence claim. ***Wolfe v. Yudichak***, 571 A.2d 592 (Vt. 1989).

The condition of the university optometry clinic office manager who suffered headaches, nausea, and disorientation was ruled an occupational injury rather than an occupational disease. ***Morrow v. Pacific Univ.***, 785 P.2d 787 (Or. Ct. App. 1990).

Location of Injury

A worker who was injured during fund-raising activities for a community college sustained compensable injuries according to the workers' compensation board since the funds raised directly benefited the college and its students. ***Mt. Hood Community College v. Kim***, 795 P.2d 1100 (Or. Ct. App. 1990).

A university employee was eligible for compensation for an injury incurred while on a paid mid-morning break on campus but away from the actual workplace. ***Lemming v. University of Cincinnati***, 534 N.E.2d 1226 (Ohio Ct. App. 1987).

Deceptive Practices

A student successfully sued a proprietary school which had used false information to induce her to enroll in a training program. ***Delta School of Commerce, Inc. v. Wood***, 766 S.W.2d 424 (Ark. 1989).

Students who sued a college after discovering that the nursing program was not accredited failed to prove fraud or breach of contract. ***Lidecker v. Kendall College***, 550 N.E.2d 1121 (Ill. App. Ct. 1990).

Medical Malpractice

The statute of limitations was applicable to the institution and the physician in an obstetrics case in which the care rendered allegedly caused a child's irreversible brain and nerve damage. However, the

case was remanded for the trier of fact to determine when the statute began to run against the public hospital. ***Menendez v. Public Health Trust of Dade County***, 566 So. 2d 279 (Fla. Dist. Ct. App. 1990).

The university was not held liable when doctors employed by the university but who performed surgery as private physicians at a city hospital were sued for malpractice. ***Parker v. Vanderbilt Univ.***, 767 S.W.2d 412 (Tenn. Ct. App. 1988).

Physicians practicing at a university hospital had no protection under the state's sovereign immunity statutes from medical malpractice actions. ***Gould v. O'Bannon***, 770 S.W.2d 220 (Ky. 1989).

A private college's dental clinic was not immune from allegations of negligence. ***DeVito v. New York Univ. College of Dentistry***, 544 N.Y.S.2d 109 (Sup. Ct. 1989).

The hospital's expert witnesses were equally available to the patient, precluding an adverse interference argument. ***Robnett v. St. Louis Univ. Hosp.***, 777 S.W.2d 953 (Mo. Ct. App. 1989).

In a title VII suit against a university by a faculty member, a six-year statute of limitations for torts was applicable. ***Acharya v. Carroll***, 448 N.W.2d 275 (Wis. Ct. App. 1989).

A summary judgment favoring a university hospital was supported by the fact that the plaintiff failed to show any expert evidence to support the position that Tay-Sachs testing of the parents was necessary. ***Munro v. Regents of Univ. of Cal.***, 263 Cal. Rptr. 878 (Ct. App. 1989).

A physician employed by a state university was not entitled to quasi-judicial immunity. ***Gleason v. Beesinger***, 708 F. Supp. 157 (S.D. Tex. 1989).

In a medical malpractice suit against a university's health services, state statutes authorized service of the Attorney General by regular mail with a motion for late filing. ***Sciarabba v. State***, 549 N.Y.S.2d 224 (App. Div. 1989).

An attorney was disqualified from representing a patient against the university in one case and serving as counsel for the university in another malpractice case. ***Crawford W. Long Memorial Hosp. v. Yerby***, 373 S.E.2d 749 (Ga. 1988).

The guardian of a patient, who suffered brain damage at a state hospital as a result of the malpractice of a resident physician, exhausted the waiver of immunity limits by accepting a $100,000 settlement. Further, the board of regents was not liable for the malpractice of residents. ***Vasquez v. Board of Regents***, 548 So. 2d 251 (Fla. Dist. Ct. App. 1989).

Antitrust

A student brought a complaint of trade restraint and violation of first amendment rights against a bar association for denying accreditation to a law school. The suit was dismissed. ***Zavaletta v. American Bar Ass'n***, 721 F. Supp. 96 (E.D. Va. 1989).

A university had not abandoned its trademarks by failing to prosecute alleged infringers or allowing uncontrolled use before initiating its licensing program. Also, the university had sovereign immunity from Sherman Act claims. Further, the use of names and symbols was not a constitutionally protected form of non-commercial speech under the first amendment. ***Board of Governors v. Helpingstine***, 714 F. Supp. 167 (M.D.N.C. 1989).

Extending credit to students at a state-owned university bookstore did not violate the Sherman Act by creating a monopoly favoring the university bookstore to the detriment of the plaintiff, a private bookstore, since the university's board of regents was constitutionally created and the extension of credit was within its express general powers and constituted an act of sovereignty. ***Cowboy Book, Ltd. v. Board of Regents for Agric. and Mechanical Colleges***, 728 F. Supp. 1578 (W.D. Okla. 1989).

Patents

A software developer did not infringe upon a copyright when it reproduced information in a new format from correlation tables of a copyrighted standardized test. ***Applied Innovations, Inc. v. Regents of Univ. of Minn.***, 685 F. Supp. 698 (D. Minn. 1987), *aff'd*, 876 F.2d 626 (8th Cir. 1989).

A college professor could patent a chemical compound despite the fact that the compound had been discussed in three students' theses shelved in the library since these documents were indexed only by cards in a shoebox in the chemistry department and were not discoverable using any normal research aids. ***In re Cronyn***, 890 F.2d 1158 (D.C. Cir. 1989).

In a patent infringement action brought by the university, the defendant's motion for a change of venue was denied since it was incorporated in another state. ***Regents of Univ. of Cal. v. Eli Lilly and Co.***, 734 F. Supp. 911 (N.D. Cal. 1990).

A university was entitled to absolute immunity in a patent infringement action brought by a professor, but there was an issue of fact regarding whether other professors were entitled to qualified immunity. ***Kersavage v. University of Tenn.***, 731 F. Supp. 1327 (E.D. Tenn. 1989).

In soliciting a patient's consent for medical treatment, a physician has a fiduciary duty to fully disclose all information relevant to the patient's decision including any research activities and subsequent patents which may emanate from the use of biological materials. ***Moore v. Regents of Univ. of Calif.***, 271 Cal. Rptr. 146 (1990).

A community college district's common law trademark rights in the educational community college market does not extend into the county cable television market. ***Tally-Ho, Inc. v. Coast Community College Dist.***, 889 F.2d 1018 (11th Cir. 1989).

Estates and Wills

A donor sued to have his contribution returned, but the court held for the university since there was no evidence that the scholarship was not awarded as prescribed nor any record that a specific promise to use the gift in a certain way had been made. ***Hawes v. Emory Univ.***, 374 S.E.2d 328 (Ga. Ct. App. 1988).

A university attempted to hold a second sister's estate responsible for a failed bequest of the first sister, but the court ruled that no contract to execute mutual wills existed. ***In re Estate of Thwaites***, 434 N.W.2d 214 (Mich. Ct. App. 1988).

Regarding a will contested by the university and multiple heirs, eventual settlement was proper and nonparty heirs were not entitled to one-third of the settlement. ***Mamoulian v. St. Louis Univ.***, 780 S.W.2d 648 (Mo. Ct. App. 1989).

Miscellaneous

Campus security had no authority to arrest a suspected burglar who was off-campus but it did have a common law right as private citizens to make the arrest. ***Hall v. Commonwealth***, 389 S.E.2d 921 (Va. Ct. App. 1990).

An arrest of a burglary suspect by university police was proper, but even if the arrest was invalid, the confession obtained during the arrest was not subject to exclusion. ***Thompson v. Commonwealth***, 390 S.E.2d 198 (Va. Ct. App. 1990).

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Case Citations
SPORT LAW

ELEVENTH Series, Number 3

Prepared by Linda A. Sharp, Visiting Assistant Professor
School of HPER, Indiana University

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Tort

Negligence

Participants

A club team rugby player who became a paraplegic because of injuries sustained in a tournament at defendant university sued in negligence. Summary judgment was affirmed on behalf of the university as the court held that, in the context of a club sport, the university had no affirmative duty to ascertain the level of fitness or preparedness of visiting clubs participating in a tournament. ***Fox v. Board of Supervisors***, 559 So. 2d 850 (La. Ct. App. 1990).

After the estate of a scuba diver brought a wrongful death action against the university for its negligence in supervising the indoor pool in which decedent drowned, the defendant failed to convince the court that the action was barred by the state's Recreation Liability Act since this Act was meant to encourage the use of land for outdoor recreational use and was not applicable to the university's indoor pool. ***Cassio v. Creighton Univ.***, 446 N.W.2d 704 (Neb. 1989).

The Court of Claims has exclusive jurisdiction over a lawsuit brought by a university gymnast who suffered a knee injury, against two athletic directors, the gymnastics coach, and the trainer for alleged negligence in the performance of their duties as university employees. Since the defendants acted within the scope of authority and not in violation of law, there is no jurisdiction outside of the Court of Claims. ***Healy v. Vaupel***, 549 N.E.2d 1240 (Ill. 1990).

The "dangerous condition of the realty" exception to sovereign immunity was not applicable in a case in which an eighteen year old non-swimmer with cerebral palsy drowned in a university's Recreation for Exceptional Citizens Program since the allegations really related to the failure to supervise and not to an artificial condition or defect of the land itself. ***Musheno v. Lock Haven Univ.***, 574 A.2d 129 (Pa. Commw. Ct. 1990).

Summary judgment was affirmed for defendant college after a student injured in an intramural soccer game sued alleging negligent supervision. The fact that plaintiff knew that the opposing team played in a rough manner does not impute this knowledge to the college. Further, plaintiff assumed the risk since the injury sustained was a reasonably foreseeable consequence of playing a high contact game such as soccer. ***Nganga v. College of Wooster***, 557 N.E.2d 152 (Ohio Ct. App. 1989).

An overweight medical student suffering from high blood pressure participated in a road race on a tropical island in conditions of high temperature and humidity. He collapsed at the finish line and died. There was no negligence by the sponsoring medical school and further, the decedent assumed the risk of thermal injury. ***Gehling v. St. George's Univ. School of Medicine***, 705 F. Supp. 761 (E.D.N.Y. 1989).

A university met its duty of care in inspecting and maintaining a field used for recreational touch football. Plaintiff student had sustained a knee injury as he turned his foot in a rut in the field. ***Drew v. State***, 536 N.Y.S.2d 252 (App. Div. 1989).

A section 1983 and wrongful death action was brought by the mother of decedent, a university football player, against the Board of Trustees, coach, physician and trainer. The district court granted defendants' motion to dismiss as it pertained to the board members on eleventh amendment grounds; it denied the motion to dismiss relative to the other parties. ***Sorey v. Kellett***, 673 F. Supp. 817 (S.D. Miss. 1987).

The court of appeals partially reversed the district court in the above matter as it held that the trainer and team physician were entitled to qualified immunity since the provision of medical care was a discretionary function. The coach also had qualified immunity in this case. ***Sorey v. Kellett***, 849 F.2d 960 (5th Cir. 1988).

A bicyclist hit his head on a cross beam which was under the press box at a state university's stadium. The appellate court reversed the court of claims finding of fault by defendant university. ***Poerio v. State***, 534 N.Y.S.2d 459 (App. Div. 1988).

A football player running wind sprints in the field house injured his foot and leg as he struck a wire-reinforced glass door. The university was not negligent in failing to replace the reinforced glass with safety glass. ***Curtis v. State***, 504 N.E.2d 1222 (Ohio Ct. App. 1986).

Defendant university's motion to dismiss was affirmed on the basis of sovereign immunity and statute of limitations. Plaintiff was an injured football player who alleged that he received improper medical care after an injury. ***Barile v. University of Va.***, 507 N.E.2d 448 (Ohio Ct. App. 1986).

A football player who was dissatisfied with the medical treatment he received from the university sought medical assistance elsewhere. His claim for the recovery of these medical expenses was denied. ***Eberhart v. Morris Brown College***, 352 S.E.2d 832 (Ga. Ct. App. 1987).

The college was not liable for an injury sustained in a baseball practice conducted by members of the varsity team but which was not sponsored by the college. ***Swanson v. Wabash College***, 504 N.E.2d 327 (Ind. Ct. App. 1987).

A cheerleader recovered $350,000 for damages sustained after a fall on astroturf. The injuries included permanent damage to her elbow and psychiatric problems. She was not warned of the dangers of this surface which is harder than grass. ***Kirk v. Washington State Univ.***, 746 P.2d 285 (Wash. 1987).

A university was not liable for its own negligence or on a theory of *respondeat superior* for injuries sustained by the driver of a truck which was hit by a van driven by a student athlete. ***Nelson v. Ronquillo***, 517 So. 2d 454 (La. Ct. App. 1987).

Sovereign immunity protected a state university from claims brought because of the death of a student-athlete in an airplane crash. The suit alleged negligence and breach of contract in failing to insure the decedent's life. ***Greenhill v. Carpenter***, 718 S.W.2d 268 (Tex. Ct. App. 1986).

An insurance company was required to defend a claim against its policy even though it related to an accident which occurred after the van owner loaned the vehicle to the university and the coach drove the van at the time of the incident. ***Fircrest Poultry Farms Co. v. State***, 728 P.2d 968 (Or. Ct. App. 1986).

Spectators

A university policy prohibited alcoholic beverages in the football stadium; nevertheless, an intoxicated student vaulted a wall and fell thirty feet onto concrete steps. The university was not responsible for injuries which resulted from the violation of the above policy. ***Allen v. Rutgers Univ.***, 523 A.2d 262 (N.J. Super. Ct. App. Div. 1987).

Summary judgment was not granted to the university since issues of fact relating to a breach of ministerial duty existed. A spectator had been injured by a goalpost which was pulled down at the conclusion of a football game. ***Cimino v. Yale Univ.***, 638 F. Supp. 952 (D. Conn. 1986).

Intentional

Reckless Misconduct

In a case in which a college ice hockey player sustained severe abdominal injuries after being "butt-ended" with an opponent's hockey stick, the court held that there must be a reckless disregard of a safety rule in order to impose liability. ***Gauvin v. Clark***, 537 N.E.2d 94 (Mass. 1989).

A lacrosse player who seriously injured an opposing player in a game was not an agent of the university and thus, the doctrine of *respondeat superior* was inapplicable. ***Hanson v. Kynast***, 494 N.E.2d 1091 (Ohio 1986).

In a continuation of the above case, the defendant player did not exhibit the "specific and perverse intent to cause physical injury" which is necessary to hold the defendant liable for an intentional tort. ***Hanson v. Kynast***, 526 N.E.2d 327 (Ohio Ct. App. 1987).

Assault

Defendant community college's motion for summary judgment was denied in regard to plaintiff's claim that the baseball coach's practice of doing "cup checks" was an assault. There was a question of fact regarding whether the player felt apprehension as the coach approached him with a bat to determine whether he was wearing the designated protective attire. ***Lesser v. Neosho County Community College***, 741 F. Supp. 854 (D. Kan. 1990).

A student-athlete assaulted a fellow student at a beer party in a dorm which led to a lawsuit against the university for its alleged failure to adequately supervise the party. The acts of the student-athlete, who had previously assaulted a residence hall advisor, did not constitute a "dangerous condition of the property." Further, the university had no duty to supervise adult college students who were voluntarily drinking beer at a dorm party. ***Crow v. State***, 271 Cal. Rptr. 349 (Ct. App. 1990).

A football player who alleged that his coach committed assault and battery by grabbing the player and shaking his facemask, calling him obscenities, and striking him, did not prevail in his suit against the university. ***Rutledge v. Arizona Bd. of Regents***, 711 P.2d 1207 (Ariz. Ct. App. 1985).

In a continuation of the above case in federal court, the former player was unable to demonstrate that a compensable injury existed under section 1985 since the plaintiff could not show that a conspiracy to intimidate witnesses hampered the plaintiff's ability to present an effective case in federal court. ***Rutledge v. Arizona Bd. of Regents***, 859 F.2d 732 (9th Cir. 1988).

Vicarious liability by the university for torts committed in athletic competition was not appropri-

ate in a case in which a basketball player struck another player with his fist. ***Townsend v. State***, 237 Cal. Rptr. 146 (Ct. App. 1987).

Defamation

An assistant basketball coach at a Division I university sued a newspaper for defamation regarding allegations of NCAA recruiting violations by the plaintiff. The Kentucky Supreme Court held that the coach was not a limited purpose public figure since he was not involved in a particular and identifiable public controversy. Therefore, actual malice by the newspaper need not be shown. ***Warford v. Lexington Herald-Leader Co.***, 789 S.W.2d 758 (Ky. 1990).

Educational Exploitation

A former basketball player asserted a number of tort and contract claims against the university which recruited him although it knew that he was quite unprepared educationally to attend the school. The court, as it granted defendant's motion to dismiss, denied the availability of tort claims in educational malpractice and negligent infliction of emotional distress. Further, the court was unable to find the breach of an express contractual provision which would give rise to a cause of action. ***Ross v. Creighton Univ.***, 740 F. Supp. 1319 (N.D. Ill. 1990).

An Idaho junior college was not subject to jurisdiction in Michigan in a case in which the plaintiff basketball player, who graduated from high school even though he was illiterate, suffered a nervous breakdown after being subjected to ridicule by junior college students who discovered his illiteracy. The junior college was allegedly "academically carrying" the plaintiff for two years before he would transfer to a four year college to play basketball. ***Jones v. Williams***, 431 N.W.2d 419 (Mich. Ct. App. 1988).

Eligibility

Discipline

A student who was cut from the baseball team at a community college brought a section 1983 action alleging a violation of his liberty and property rights. In a ruling on defendant college's motion for summary judgment the court held that there was no liberty interest in playing baseball. However, there was a conceivable property interest since the player had some financial loss due to fines paid for team rules violations. ***Lesser v. Neosho County Community College***, 741 F. Supp. 854 (D. Kan. 1990).

Participation as a Professional

An ice hockey player was denied eligibility to play on an intercollegiate team since he had participated in a Canadian league which was declared to be a professional team by NCAA directive. The plaintiff failed to show state action by the university and his right of association claim was unsuccessful. ***Karmanos v. Baker***, 816 F.2d 258 (6th Cir. 1987).

Transfer

Two football players who were prevented from participating due to NCAA transfer regulations filed suit alleging first and fourteenth amendment violations. However, the NCAA was held not to be a "state actor" and the university was protected by the eleventh amendment. ***Graham v. National Collegiate Athletic Ass'n***, 804 F.2d 953 (6th Cir. 1986).

Drug Testing

An injunction permanently enjoining the NCAA from enforcing its drug testing program for student-athletes was upheld by the appellate court. The court's ruling, based on the right to privacy set forth in the California Constitution, focused on the fact that the NCAA could not establish "compelling interests" in its testing program. ***Hill v. National Collegiate Athletic Ass'n***, 273 Cal. Rptr. 402 (Ct. App. 1990).

A track athlete at a private university sought relief under the Massachusetts Privacy Act and the state Civil Rights Act in his challenge to the NCAA random drug testing program at the school. The state court was the appropriate forum for these claims. ***Bally v. National Collegiate Athletic Ass'n***, 707 F. Supp. 57 (D. Mass. 1988).

In a continuation of the above case, the drug testing program was found not to violate the privacy statute which, heretofore, had been used primarily in cases dealing with the public dissemination of information, which was not at issue in this case. ***Bally v. Northeastern Univ.***, 532 N.E.2d 49 (Mass. 1989).

A female track athlete filed suit against a state university challenging its drug testing plan. She obtained a court order forbidding the university to implement the plan. The university was unable to get a preliminary injunction to prevent the NCAA from sanctioning the university for failure to drug test its athletes. ***O'Halloran v. University of Wash.***, 672 F. Supp. 1380 (W.D. Wash. 1987).

The above case had been removed to federal court after the addition of the NCAA as a third party defendant. The circuit court of appeals, however, remanded the matter to the district court with

directions to remand to the state court since the case dealt with matters of state law. ***O'Halloran v. University of Wash.***, 856 F.2d 1375 (9th Cir. 1988).

Enforcement of Rules

University alumni, football players, and cheerleaders sued the NCAA for the violation of antitrust and civil rights laws after the university received the "death penalty." The cheerleaders and alumni lacked standing to pursue the antitrust claim and the football players lost on the merits. The NCAA was not a state actor and therefore, was not subject to civil rights claims. ***McCormack v. National Collegiate Athletic Ass'n***, 845 F.2d 1338 (5th Cir. 1988).

Summary judgment was granted to defendant university when black football players who alleged racial discrimination against the university were removed from the team but were not stripped of their scholarships. There is no property right in the right to play football, only in the right to receive the scholarship funds. Summary judgment was not granted in regard to the possible infringement of first amendment rights. ***Hysaw v. Washburn Univ.***, 690 F. Supp. 940 (D. Kan. 1987).

A restraining order was not granted to a university which alleged that the NCAA violated its own guidelines in awarding postseason tournament berths. Even though the plaintiff might have prevailed on the merits, there was a risk of substantial harm to the schools which were already at the sites of postseason games. ***Howard Univ. v. National Collegiate Athletic Ass'n***, 675 F. Supp. 652 (D.D.C. 1987).

NCAA sanctions against a university basketball team were unsuccessfully challenged. The NCAA is not a state actor and athletes do not have a protected property interest in postseason competition. ***Hawkins v. National Collegiate Athletic Ass'n***, 652 F. Supp. 602 (C.D. Ill. 1987).

Equality of Programs

Gender

A university and its counsel were sanctioned for discouraging plaintiffs, who were women student-athletes bringing claims of sex discrimination in athletics, from meeting with their counsel. ***Haffer v. Temple Univ.***, 115 F.R.D. 506 (E.D. Pa. 1987).

In a continuation of the above case, a federal district court denied the university's motion for summary judgment. ***Haffer v. Temple Univ.***, 678 F. Supp. 517 (E.D. Pa. 1987).

A remedy for sex discrimination under a state equal rights amendment must include the football program. The exclusion of football revenues and scholarships from remedial efforts would always prevent sex equity from being achieved. ***Blair v. Washington State Univ.***, 740 P.2d 1379 (Wash. 1987).

The university's athletic program was not covered by title IX since it was not a direct recipient of federal financial assistance. ***Bennett v. West Tex. State Univ.***, 799 F.2d 155 (5th Cir. 1986).

Admissions

A father acting *pro se* lacked standing to sue the NCAA after his emancipated son was denied admission to a state university. He has no right to bring a lawsuit to redress any alleged injury inflicted upon a third party (his son). ***Peebles v. National Collegiate Athletic Ass'n***, 723 F. Supp. 1155 (D.S.C. 1989), *aff'd without opinion*, 887 F.2d 1080 (4th Cir. 1989).

Employment

Adverse Employment Decisions

A terminated football coach was unsuccessful in his wrongful discharge action against the university and its president. As an at-will employee, the plaintiff had no action available for wrongful discharge. Further, he was not entitled to a pretermination hearing since he had no property interest in his position. ***Frazier v. University of D.C.***, 742 F. Supp. 28 (D.D.C. 1990).

A former university baseball coach brought a wrongful termination action against the university and its athletic director. Based on language in university policies, material issues of fact existed as to the existence of an implied in fact agreement not to terminate except for good cause. ***Wood v. Loyola Marymount Univ.***, 267 Cal. Rptr. 230 (Ct. App. 1990).

Following a lengthy investigation of the basketball program, the NCAA ordered the suspension of the basketball coach and directed the university to show cause why additional penalties should not be imposed if the university did not suspend the coach. The NCAA was a state actor and procedural due process was required since the right to discipline public employees is traditionally the prerogative of the state. ***Tarkanian v. National Collegiate Athletic Ass'n***, 741 P.2d 1345 (Nev. 1987).

In a continuation of the above case, the United States Supreme Court, in a five-to-four decision, found that the NCAA was not a state actor since there was no delegation of government power from the state university to the NCAA. Further, the adoption

of NCAA rules by the university did not make them state rules since the university has the power to withdraw from the NCAA. ***National Collegiate Athletic Ass'n v. Tarkanian***, 109 S. Ct. 454 (1988).

A former director of intercollegiate athletics failed in her claim against the university for reinstatement to her position after she alleged that she was terminated because of the exercise of her free speech rights. ***Hill v. Board of Trustees***, 238 Cal. Rptr. 799 (Ct. App. 1987).

A tenured associate professor who also served as a university's recreational sports director was terminated from both his academic and administrative positions because of the misuse of university assets. The court upheld the challenged termination from the academic position since it found that the character defects disclosed by his conduct would impair his ability to perform as a faculty member. ***Mueller v. Regents of Univ. of Minn.***, 855 F.2d 555 (8th Cir. 1988).

Contract Disputes

A breach of contract action was brought by a party who sold advertising time for defendant's sports network which broadcast university athletic events. The statute of frauds defense raised regarding this oral agreement was not applicable because the performance of contract duties could have been completed within one year from the contract's inception. ***Sports/Media Sales Co. v. Rasmussen***, 691 F. Supp. 156 (N.D. Ill. 1988).

The NCAA, which had the right to approve announcers for NCAA televised football games, did not approve the plaintiff, a former professional football player who had been suspended from football for gambling and who had a well-known reputation as a playboy. The plaintiff broadcaster did not succeed in his claim for intentional interference with prospective contractual relations since the NCAA acted in good faith and with legitimate reasons in denying approval. ***National Collegiate Athletic Ass'n ex. rel. Bellarmine College v. Hornung***, 754 S.W.2d 855 (Ky. 1988).

An assistant football coach was unsuccessful in a breach of contract action against a head coach and a university when the university governing board did not approve the head coach's recommendation of the plaintiff for the coaching position. The plaintiff had already sold his home and had begun to look for housing in the new location believing that his approval was a mere formality. ***Bruner v. University of S. Miss.***, 501 So. 2d 1113 (Miss. 1987).

An athletic director who recommended that a head basketball coach not be rehired was not liable for intentional interference with plaintiff's contractual relations nor intentional infliction of emotional distress. ***Lindsey v. Dempsey***, 735 P.2d 840 (Ariz. Ct. App. 1987).

An agreement with a sports agent which was executed by a college football player in violation of NCAA rules was not enforceable under New York law. ***Walters v. Fullwood***, 675 F. Supp. 155 (S.D.N.Y. 1987).

A contract with a basketball coach which exceeded one year violated state law. However, the court concluded that multi-year contracts may be possible in some circumstances and therefore upheld the enforceability of the alleged multi-year contract with the coach. ***University of Ariz. v. County of Pima***, 722 P.2d 352 (Ariz. Ct. App. 1986).

Unemployment Compensation

Unemployment compensation benefits were upheld for a part-time soccer coach who sought benefits after the end of the season but during the academic year. ***In re Curto***, 517 N.Y.S.2d 107 (App. Div. 1987).

Workers' Compensation

A community college instructor and coach of racket sports who sustained a work-related shoulder injury was unable to show that he was totally disabled and had reached maximum medical improvement. ***McGehee v. Broward Community College***, 559 So. 2d 368 (Fla. Dist. Ct. App. 1990).

A basketball coach with a possible organic brain disorder and suicidal tendencies was not entitled to workers' compensation. His mental disability, allegedly caused by circumstances within his employment, was produced solely by mental stimuli and therefore, not compensable under state law. ***Lather v. Huron College***, 413 N.W.2d 369 (S.D. 1987).

A university football player who had been the recipient of an athletic scholarship was unsuccessful in his attempt to recover workers' compensation for injuries sustained as an athlete since he was not an employee of the university. ***Graczyk v. Workers' Compensation Appeals Bd.***, 229 Cal. Rptr. 494 (Ct. App. 1986).

Discrimination

Race

A case in which a black assistant basketball coach's contract was not renewed and a white male was hired in replacement, was remanded to allow

the plaintiff to present evidence of pretext since the plaintiff had established a *prima facie* case of retaliatory discharge. ***Greenwood v. Ross***, 778 F.2d 448 (8th Cir. 1985).

Sex

The plaintiff, a female academic coordinator for a university athletic department, was unable to establish that the reasons given for her discharge, i.e., student complaints, improper advisement, and pressuring faculty to give athletes special treatment, were pretextual. ***Gray v. University of Ark.***, 658 F. Supp. 709 (W.D. Ark. 1987).

In a continuation of the above title VII case, the court of appeals affirmed the lower court's decision on the basis that plaintiff failed to produce credible evidence of discrimination. ***Gray v. University of Ark.***, 883 F.2d 1394 (8th Cir. 1989).

A female assistant softball coach alleged that a consent decree was violated in the procedures used to deny her full-time status. The court of appeals disagreed with her as it found that the decision affecting her was programmatic and budgetary and thus, not subject to the criteria of the consent decree. ***Sennewald v. University of Minn.***, 847 F.2d 472 (8th Cir. 1988).

A women's basketball coach failed in her title IX and title VII claims because the decision not to rehire her was based upon a multiplicity of incidents demonstrating her incompetence. ***O'Connor v. Peru State College***, 781 F.2d 632 (8th Cir. 1986).

First Amendment

A university biology teacher, who was not granted tenure, asserted that tenure was denied in retaliation for his exercise of free speech rights. The teacher had made statements that the professors at the university showed favoritism to athletes and premed students and that there was an exchange of grades for sex. Although the court found his remarks to relate to a matter of public concern, his speech was not a substantial or motivating factor in the decision not to grant tenure. ***Coats v. Pierre***, 890 F.2d 728 (5th Cir. 1989).

An athletic director who was terminated failed in his suit which alleged that this action violated his rights of free speech because he spoke openly about violations of NCAA rules. Although this matter is one of public concern, as a policy level official, the university had an important interest in showing that the plaintiff was indeed compatible with the president and the board of trustees. ***Hall v. Ford***, 856 F.2d 255 (D.C. Cir. 1988).

An intramural athletics coordinator at a community college claimed that the termination of his employment was in retaliation for the assertions made by him in regard to alleged misconduct by the college president. However, the matter was not one of public concern because the plaintiff's speech related to a personal vendetta with the department chairperson. ***Berg v. Hunter***, 854 F.2d 238 (7th Cir. 1988), *cert. denied*, 489 U.S. 1053 (1989).

A former director of intercollegiate athletics failed in her claim against the university for reinstatement to her position after she alleged that she was terminated because of the exercise of her free speech rights. ***Hill v. Board of Trustees***, 238 Cal. Rptr. 799 (Ct. App. 1987).

Miscellaneous

Taxation

The United States Tax Court determined that the NCAA owed unrelated business income tax on the advertising revenues it received from the programs sold at the Men's Division I Basketball Championship. The appellate court reversed on the basis that the sale of ad space is not a "regularly carried on" business such that the revenue therefrom is taxable as unrelated business income. ***National Collegiate Athletic Ass'n v. C.I.R.***, 914 F.2d 1417 (10th Cir. 1990).

The Kansas Supreme Court reversed the Board of Tax Appeals' denial of an exemption from sales tax for the NCAA. The high court concluded that the NCAA is entitled to exemption as an educational institution. ***National Collegiate Athletic Ass'n v. Kansas Dep't of Revenue***, 781 P.2d 726 (Kan. 1989).

A university, which leased its tennis courts to a private tennis club and also used the courts for classes and intercollegiate tennis team practice, was unable to prevail as it sought relief from state real estate taxes because the property was not used primarily for an exempt purpose. ***DePaul Univ., Inc. v. Rosewell***, 531 N.E.2d 884 (Ill. App. Ct. 1988).

The sale of tickets to university athletic events was not conducted for private profit; therefore, the city's 2% amusement tax was not applicable. ***City of Morgantown v. West Va. Bd. of Regents***, 354 S.E.2d 616 (W.Va. 1987).

Public Records/Open Meetings

The publisher of a local newspaper sought disclosure of information regarding the resignation of the university women's basketball coach since he resigned just a few months after agreeing to a three year reappointment. The university's settlement

agreement with the coach was subject to full disclosure except for one sentence which related to the coach's medical condition. ***Guy Gannett Publishing Co. v. University of Me.***, 555 A.2d 470 (Me. 1989).

Broadcasters and newspapers sued the NCAA and the Southwest Athletic Conference to compel disclosure of information relating to the misconduct of member institutions. Two universities were denied permission to intervene in the action. ***Kneeland v. National Collegiate Athletic Ass'n***, 806 F.2d 1285 (5th Cir. 1987).

In a continuation of the above action, the NCAA and the Southwest Athletic Conference were found not to be governmental bodies and therefore, not subject to the requirements of the Texas Open Records Act. ***Kneeland v. National Collegiate Athletic Ass'n***, 850 F.2d 224 (5th Cir. 1988).

A writ of mandamus was issued compelling a university president to disclose information to a newspaper regarding the recruitment of a high school athlete. ***Vandiver v. Star-Telegram, Inc.***, 756 S.W.2d 103 (Tex. Ct. App. 1988).

Since there was no "tradition of access" under state law for the media to have access to a letter of inquiry which was sent from the NCAA to a state university, the defendant university's motion to dismiss was granted. ***Combined Communications Corp. v. Boger***, 689 F. Supp. 1065 (W.D. Okla. 1988).

A newspaper was unsuccessful in its action under the Open Records Act to have a private university divulge correspondence concerning allegations that certain NCAA member schools violated rules relating to the recruitment of student-athletes. ***Southern Methodist Univ. v. Times Herald Printing Co.***, 729 S.W.2d 129 (Tex. Ct. App. 1987).

In a case involving a number of private universities in Texas, it was decided that the state Open Records Act is not applicable to private universities since they are not governmental bodies. Further, it was not an abuse of discretion for the lower court to award attorneys' fees to the universities. ***A.H. Belo Corp. v. Southern Methodist Univ.***, 734 S.W.2d 720 (Tex. Ct. App. 1987).

Reports prepared by the chancellors of several state universities regarding intercollegiate athletics were subject to disclosure as public records according to the lower court. However, the appeals court held that the matter was moot since the materials had already been made public. ***North Carolina Press Ass'n v. Spangler***, 360 S.E.2d 138 (N.C. Ct. App. 1987).

A task force convened by a university board of regents to deal with the academic achievement of student-athletes was not a public body within the meaning of the open meeting law. Therefore, its meetings need not be open to the public. ***A.S. Abell Publishing Co. v. Board of Regents***, 514 A.2d 25 (Md. Ct. Spec. App. 1986).

Records of a private athletic association which revealed its income, expenses, assets, and liabilities were public records under the state Open Records Act and were subject to disclosure. ***Macon Telegraph Publishing Co. v. Board of Regents***, 350 S.E.2d 23 (Ga. 1986).

Licensing

When sued by a university, which had recently begun a licensing program for its merchandise, a local retail outlet unsuccessfully argued that the university had abandoned its marks because it did not prosecute trademark infringers before 1982. ***Board of Governors v. Helpingstine***, 714 F. Supp. 167 (M.D.N.C. 1989).

Collective Bargaining

A group of college basketball officials asserted that the Big East Athletic Conference violated the National Labor Relations Act when it refused to bargain with the officials. However, the appellate court found that the officials were not employees and thus, the refusal to bargain was not an unfair labor practice. ***Collegiate Basketball Officials Ass'n, Inc. v. NLRB***, 836 F.2d 143 (3d Cir. 1987).

Fees

University students unsuccessfully challenged the transfer of student athletic fees from the board of regents to the athletic association. Since this transfer of fees was not a gratuity, it was permissible because of the substantial benefits gained by the university from its affiliation with the association. ***Haggard v. Board of Regents***, 360 S.E.2d 566 (Ga. 1987).

Distributor Contracts

A basketball coach, who was terminated from his employment, sought to enforce an oral agreement with an athletic shoe distributor for money to be paid to him as an advisor and consultant, i.e., having the team members wear a particular brand of shoes. The court held that the coach's termination was sufficient reason to void the agreement. ***Lindsey v. Clossco***, 642 F. Supp. 250 (D. Ariz. 1986).

Antitrust

There were issues of material fact which precluded plaintiff's motion for summary judgment in this antitrust action which dealt with the right to broadcast football games of the Big Eight Conference. ***Association of Indep. Television Stations, Inc. v. College Football Ass'n***, 637 F. Supp. 1289 (W.D. Okla. 1986).

Real Estate

The Illinois Legislature conveyed 18.5 acres of lakebed to a private university to use for the construction of athletic facilities. An injunction was granted to restrain the university from proceeding; the conveyance violated the public trust doctrine since the primary purpose of the grant was to satisfy a private interest. ***Lake Mich. Fed'n v. United States Army Corps of Engineers***, 742 F. Supp. 441 (N.D. Ill. 1990).

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EMPLOYMENT

ELEVENTH Series, Number 4

Prepared by Terrence Leas, Associate Dean of Instruction
Yakima Valley Community College

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Nontenured Employees

Constitutional Issues

General

If university regulations governing the award of tenure specifically eliminate the possibility of tenure by default and *de facto* or common law tenure, the burden of determining an individual faculty member's tenure status rests with the faculty member. Thus, where a university has published procedures governing tenure, the legitimacy of a claim to tenure acquired outside the published procedures is vitiated because there is no basis for mutuality. ***LaVerne v. University of Tex. Sys.***, 611 F. Supp. 66 (S.D. Tex. 1985).

A state technical college policy providing for a hearing prior to the nonrenewal of probationary employees' contracts was enacted after a nontenured instructor's contract was renewed. Therefore, the instructor had no legitimate expectation to a hearing when his contract was nonrenewed. ***Moore v. Utah Technical College***, 727 P.2d 634 (Utah 1986).

The discharge of a university law enforcement officer was justified because it was based upon his repeated refusals to comply with his supervisor's orders and recommendations. There was no evidence to suggest that the former employee's criticisms of his supervisor and his cohabitation with an unmarried female were substantial and motivating factors in the decision not to rehire. Because of the public interest in prompt action, a pretermination hearing was not required. ***Robinson v. Boyer***, 643 F. Supp. 975 (N.D. Miss. 1986), *aff'd*, 825 F.2d 64 (5th Cir. 1987).

A system of higher education is an instrumentality of the state and entitled to protection by the eleventh amendment. An untenured faculty member, therefore, is barred by sovereign immunity from seeking back pay related to an improper termination of employment. ***Skehan v. State Sys. of Higher Educ.***, 815 F.2d 244 (3d Cir. 1987).

The faculty of a law school did not have standing to challenge the denial of tenure to two of their colleagues, and the university's chancellor lacked the authority to unilaterally deny tenure to the two faculty members without first having referred their applications for tenure to the board of trustees. ***Faculty of City Univ. v. Murphy***, 531 N.Y.S.2d 665 (Sup. Ct. 1988).

Property/Liberty Interests

A former assistant professor, hired for a fixed one-year term at a state university, had no constitutional right to be informed of the reason for his nonrenewal or to a hearing or an appeal since the university's decision did not deprive him of any liberty or property rights. This is a landmark case concerning the due process rights of probationary faculty at public institutions. ***Board of Regents v. Roth***, 408 U.S. 564 (1972).

An untenured faculty member with a long period of service at a state college may possess as many property interests as a tenured instructor, entitling him to a statement of reasons and a hearing before being nonrenewed. This is a landmark case which established the concept of *de facto* tenure. ***Perry v. Sindermann***, 408 U.S. 593 (1972).

A community college administrator, who admittedly had neither tenure nor the expectation of tenure and who was provided a full year in which to find another job, did not have any property or liberty interests in continued employment which would invoke due process safeguards prior to his termination. ***Harrison v. Ayers***, 673 F.2d 724 (4th Cir. 1982).

A state statute providing that university officials could not terminate an existing contract, except for specified cause, did not create a reasonable expectation of continued employment for an untenured librarian which would entitle her to due process safeguards. University officials had exercised their discretion in not renewing her contract after its expiration. ***Montgomery v. Boshears***, 698 F.2d 739 (5th Cir. 1983).

A faculty member's mere subjective expectancy of continued employment, despite not having attained the required years of service for tenure, does not create a constitutionally protected property interest necessary to invoke the fourteenth amendment's procedural due process provisions when there is no evidence to suggest that the university utilized a *de facto* tenure policy generally or in regard to the employee. ***Wells v. Doland***, 711 F.2d 670 (5th Cir. 1983).

Procedural requirements ordinarily do not transform a unilateral expectation into a constitutionally protected property interest. Only if the procedural requirements are intended to be a significant substantive restriction on a decisionmaker will a constitutionally protected liberty interest be created. Since the guidelines in a university faculty code did not significantly limit officials' discretion in making tenure decisions, the guidelines did not enhance the candidate's expectation of obtaining tenure sufficiently to establish a constitutionally protected interest. ***Goodisman v. Lytle***, 724 F.2d 818 (9th Cir. 1984).

An untenured faculty member did not have a property interest in continued employment simply because of her unilateral understanding that the

terms of her employment were the same as those which prevailed at other institutions. Where an institution's policies and contracts failed to disclose any policy of permanent *de facto* tenure, a tenure track faculty member has neither a claim to tenure nor a property right to invoke the due process clause. ***Sabet v. Eastern Va. Medical Auth.***, 775 F.2d 1266 (4th Cir. 1985).

Faculty on tenure track at a state university lack a property interest in receiving tenure if the initial appointment does not include the right to continued employment unless dismissed after an adversarial hearing. ***Upadhya v. Langenberg***, 834 F.2d 661 (7th Cir.), *cert. denied*, 108 S. Ct. 2016 (1987).

University officials erred by submitting a letter to an instructor indicating that she was being issued a tenure track appointment for an additional year beyond that permitted by the faculty handbook, instead of issuing her a prescribed one-year terminal contract. However, the error did not confer a reasonable expectation of tenure status. A subsequent vote by the board of trustees to award the instructor a special tenure contract, which did not comply with a state statute governing such votes, was a nullity and could not convey a legitimate expectation of continued employment sufficient to entitle the instructor to procedural due process. ***House v. University of Cent. Ark.***, 684 F. Supp. 222 (E.D. Ark. 1988).

First Amendment

Freedom of Speech

A university professor denied tenure had the burden of proving that the denial was in retaliation for his exercise of free speech. To the extent that his remarks diminished the collegiality of the department, university officials could base their decision not to recommend tenure on these remarks even though they enjoy first amendment protection. ***Mayberry v. Dees***, 663 F.2d 502 (4th Cir. 1981).

Junior college officials required the chair of the art department to relocate some of his sexually explicit and racially offensive works on exhibit to an alternate site on the campus. The officials' decision was regulatory, rather than suppressive, *vis-a-vis* the artist's expression. To allow the exhibition of such work in the busiest corridor in the college would adversely affect its ability to recruit students and solicit community support. Thus, the college's interest justified moving selected works of art into another, less visible, gallery in the same building. ***Piarowski v. Illinois Community College Dist. 515***, 759 F.2d 625 (7th Cir. 1985).

Summary judgment was denied pending further consideration of whether statements and activities were protected by the first amendment in a case in which a terminated faculty member was dismissed for criticizing the chairman of his department and for writing letters to the regional accrediting agency, critical of the academic standards of a master's degree program. ***Johnson v. Lincoln Univ.***, 776 F.2d 443 (3rd Cir. 1985).

Two community college radio station employees discharged for failing to comply with a directive prohibiting reporting on certain topics had no first amendment right to broadcast. The right to determine what was broadcast rested solely with the holder of the Federal Communications Commission license, i.e., the college. The public institution context of the case did not afford the plaintiffs more rights than employees of a private broadcaster. ***Schneider v. Indian River Community College Found.***, 684 F. Supp. 283 (S.D. Fla. 1987), *aff'd in part*, 875 F.2d 1537 (11th Cir. 1989).

Statements by a former university professor before a state investigating committee regarding the improper use of state funds addressed matters of public concern and were protected by the first amendment. However, the professor's nonrenewal the year after his remarks was not predicated on the statements but on a marked and persistent decline in enrollment which occurred prior to his speech. ***Hamer v. Brown***, 831 F.2d 1398 (8th Cir. 1987).

A former employee's oral and written reports to supervisors regarding defects in health center timekeeping and payroll accounting techniques are protected speech. An employee's personal interest in a topic of public concern does not derogate the claim to first amendment protection. ***Schweitzer v. University of Tex. Health Center***, 688 F. Supp. 278 (E.D. Tex. 1988).

A discharged university librarian's use of university grievance procedures to challenge a reassignment and a change in the length of his faculty appointment did not involve protected speech because the communications were motivated by and directed toward his personal employment situation. ***Leachman v. Rector and Visitors of University of Va.***, 691 F. Supp. 961 (W.D. Va. 1988).

Despite reassurances by his department chair that he was progressing satisfactorily toward tenured status, an associate professor had neither an interest in the granting of tenure nor any claim that the denial of tenure was predicated on his exercise of his first amendment rights. If an institution provides an explicit and formal policy governing tenure, informal and customary understandings cannot create a property interest contrary to the formal rules. ***Staheli v. University of Miss.***, 854 F.2d 121 (5th Cir. 1988).

The dismissal of a community college intramural athletic coordinator because of a department reorganization did not involve a constitutional violation. Speech involving contentious and embittered accusations which incidentally touch upon a single matter of broader public concern is not constitutionally protected. ***Berg v. Hunter***, 854 F.2d 238 (7th Cir. 1988), *cert. denied*, 489 U.S. 1053 (1989).

The dismissal of an athletic director who spoke out regarding possible violations of university and National Collegiate Athletic Association rules was upheld because of the individual's position, his lack of any expectation of continued employment, and because the university's interest in ensuring its effective administration outweighed the employee's right to speak on matters of public concern within his area of responsibility. ***Hall v. Ford***, 856 F.2d 255 (D.C. Cir. 1988).

A university employee's disclosure of questions used in a shopping mall survey conducted by a university survey research department involved a matter of public concern. The employee's free speech interests outweighed the university's interest in maintaining the confidentiality of the survey questions, and the employee's subsequent discharge violated his first amendment rights. ***Barnhill v. Board of Regents***, 462 N.W.2d 249 (Wis. Ct. App. 1990).

Academic Freedom

A nontenured, temporary substitute instructor could be dismissed because of his teaching methods and behavior. The first amendment and academic freedom do not shield faculty when they make captious remarks irresponsibly to a "captive audience" of students. Disputes with colleagues about course content are not matters of public concern. ***Clark v. Holmes***, 474 F.2d 928 (7th Cir. 1972), *cert. denied*, 411 U.S. 972 (1973).

Since a nontenured public university faculty member refused to comply with institutional guidelines for course content and methods, her nonrenewal because of her pedagogical attitude did not violate any of her first amendment rights. The teaching methods of faculty do not merit constitutional protection. ***Hetrick v. Martin***, 480 F.2d 705 (6th Cir. 1972), *cert. denied*, 414 U.S. 1075 (1973).

A probationary faculty member's refusal to lower his academic standards was a substantial motivating factor in the decision not to renew his contract. There is no violation of a protected right. The court refused to consider an untenured faculty member's grading policy as constitutionally protected because to do so would prevent the university from defining and performing its educational mission. ***Lovelace v. Southeastern Mass. Univ.***, 793 F.2d 419 (1st Cir. 1986).

An untenured faculty member was not an effective instructor; therefore, his nonrenewal did not involve a constitutional violation. While academic freedom may protect an instructor who expresses unpopular or controversial opinions, it does not insulate him from evaluation by his employer. Officials may consider student evaluations expressing disapproval of his teaching methods without violating any first amendment rights. ***Carley v. Arizona Bd. of Regents***, 737 P.2d 1099 (Ariz. Ct. App. 1987).

A university's decision to deny tenure to a faculty member based upon his lenient grading policy, even though the grading policies of other faculty members were not considered in other tenure decisions, did not constitute an equal protection violation because the consideration of the grading policy was rationally related to the legitimate purpose of maintaining minimum levels of faculty quality. ***Levi v. University of Tex.***, 840 F.2d 277 (5th Cir. 1988).

An individual professor's act of assigning a grade to a student is entitled to some measure of first amendment protection because the assignment of a letter grade is symbolic communication intended to send a specific message to the student. If university officials compel the individual professor to assign a specific grade, they violate his right to academic freedom. However, if university officials change a grade assigned by the professor, none of his first amendment rights are implicated. Academic freedom does not prevent university administrators from observing, reviewing, or evaluating a nontenured faculty member. ***Parate v. Isibor***, 868 F.2d 821 (6th Cir. 1989).

Contractual Issues

A professor who was issued a letter extending her contract to provide her with an additional year in which to satisfy tenure requirements by improving her publications record, successfully submitted two articles for publication in refereed journals. The university's failure to award tenure under those circumstances constituted a breach of her employment contract. ***Gladney v. Thomas***, 573 F. Supp. 1232 (N.D. Ala. 1983).

Parties to a contract may agree to whatever they choose so long as their agreement is not *contra bonos mores* or in violation of a prohibitory law. The fact that a faculty member did not fit the description of a "visiting professor" found in the faculty handbook did not prevent him and university officials from agreeing that his rank under a particular contract would be "visiting associate professor" and that his

time of service in this role would not accrue toward tenured status. ***Tetlow v. Loyola Univ.***, 483 So. 2d 1242 (La. Ct. App. 1986).

When a form contract for a teaching position fails to include the complete agreement and understanding of the parties, letters from a dean promising to recommend tenure to a faculty member were part of the contract. ***Lewis v. Loyola Univ.***, 500 N.E.2d 47 (Ill. App. Ct. 1986).

Dismissal standards under procedures promulgated by the American Association of University Professors apply to term contracts only when the decision to terminate is an attempt to cancel an established, on-going contractual relationship. Teachers at a private college serving under term contracts who were provided notice of nonrenewal were not dismissed within the meaning of the AAUP standards, and there was neither a breach of contract nor a wrongful termination. ***Hill v. Talladega College***, 502 So. 2d 735 (Ala. 1987).

In a breach of contract action in which a faculty member denied tenure sought discovery of the deliberations and conversations of the promotions and tenure committee, he may not compel discovery over a claim of privilege absent a compelling need for disclosure. To permit such deliberations to become open to review by disgruntled faculty members would prevent colleges from finding faculty members to serve on such committees. ***Desimone v. Skidmore College***, 517 N.Y.S.2d 880 (Sup. Ct. 1987).

Language in a faculty handbook which specifies that upon evidence of satisfactory evaluations an employee may be reemployed for an additional term does not evidence a binding contract to rehire the employee. At the conclusion of the existing contract, the employee becomes an employee at will and the institution has no further obligation to employ her. ***Brumbach v. Rensselaer Polytechnic Inst.***, 510 N.Y.S.2d 762 (App. Div. 1987).

At-will employees may not seek a claim for breach of an implied covenant of good faith and fair dealing in the District of Columbia. ***Gomez v. Trustees of Harvard Univ.***, 676 F. Supp. 13 (D.D.C. 1987).

An untenured instructor of economics at a private college was informed that he would not be rehired because the president believed that the instructor had not demonstrated sufficient evidence of scholarship to merit reappointment despite a unanimous recommendation for reappointment by his department. The college did not breach its contract with the instructor because he became an at-will employee at the expiration of his current contract, and the college did not deviate from its own standard of scholarship for reappointing untenured faculty. ***Rosen v. Vassar College***, 525 N.Y.S.2d 399 (App. Div. 1988).

Since appointment letters failed to include any mention of tenure or any right to reappointment, the parol evidence rule precluded the proof of any oral agreement. ***Ozerol v. Howard Univ.***, 545 A.2d 638 (D.C. 1988).

Despite a series of successive contracts as a nontenure track faculty member and an understanding that tenure decisions were a faculty prerogative, a physician/associate professor relied upon a promise allegedly made by the university medical center chancellor to her husband that she would have tenure within four years. Her reliance on the chancellor's promise was not reasonable given that she and her husband had extensive academic experience, that she understood how tenure decisions are made, that she knew her appointment would be conditioned on the availability of funding, and that she had received various confirmation and reappointment letters indicating that her appointment was not leading to tenure. ***Gottlieb v. Tulane Univ.***, 529 So. 2d 128 (La. Ct. App. 1988).

Where contractual language consistent with a negotiated agreement between an institution and a bargaining unit specifies that tenure is not a protected right, a faculty member who has the requisite number of years of service possesses only the right to be considered for tenure. ***Beville v. South Dakota Bd. of Regents***, 687 F. Supp. 464 (D.S.D. 1988).

Tenured Employees

Constitutional Issues

General

University officials could have reasonably concluded that their action to dismiss the head of a university speech and theater department did not violate his constitutional rights. The officials were entitled to qualified immunity with respect to each claim of first and fourteenth amendment violations. ***Garvie v. Jackson***, 845 F.2d 647 (6th Cir. 1988).

An attorney for the board of trustees who presided at a dismissal hearing for a tenured professor of political science did not usurp the board's legitimate role. There was no evidence of bias or improper action by the board's attorney, and counsel for the faculty member never objected to the actions or the rulings of the board's attorney. ***Cotter v. District Bd. of Trustees***, 548 So. 2d 731 (Fla. Dist. Ct. App. 1989).

Due Process

The due process rights of a university professor were violated when he was held in contempt for refusing to answer a state attorney general's questions concerning a lecture given at the university. This is a landmark case which outlines the four academic freedoms of faculty and which holds that academic freedom is granted some measure of constitutional protection. ***Sweezy v. New Hampshire***, 354 U.S. 234 (1957).

The issue of whether a tenured university professor who had received notice and a hearing which met the standards of procedural due process, was entitled to a hearing absent even the appearance of bias was a matter of state, not constitutional law. The appearance of bias only, without actual bias being present in the members of a faculty committee recommending the termination of a colleague for sexually harassing students, did not violate the faculty member's due process rights. ***Levitt v. University of Tex.***, 759 F.2d 1224 (5th Cir. 1985), *cert. denied*, 474 U.S. 1034 (1985).

After being placed on probation by a hearing committee for various infractions, a tenured faculty member consented to additional hearings on her status. The president, upon consideration of the committee's recommendation and a review of the faculty member's personnel file, informed her that she would be dismissed. The dismissal was affirmed because the president could review the file and consider evidence which "reasonable men are accustomed to rely on" before making a rational decision. The president was not bound by the original committee recommendation of probation, and the faculty member consented to additional hearings which she knew could result in a new decision by the president. Having sought relief from the original decision, the faculty member could not complain when a different decision was delivered. ***Johnson v. Alabama A & M Univ.***, 481 So. 2d 336 (Ala. 1985).

First Amendment

A state law, which provoked the dismissal of several public university faculty members who refused to sign certificates that they were not Communists, was unconstitutionally vague and violated the faculty members' rights of association. This is a landmark case establishing that disclaimer oaths requiring state employees to forswear activities or associations to which they are otherwise entitled to pursue as private citizens are beyond constitutional bounds. ***Keyishian v. Board of Regents***, 385 U.S. 589 (1967).

Whether a state employee's exercise of free speech merits dismissal for interfering with the state's interest in maintaining an efficient educational system depends upon the balancing of several factors: (1) the nature of the working relationship between the employee and those he criticized; (2) the public nature of the speech; (3) the degree of the speech's detrimental effect on the administration of the educational system; (4) the degree of any adverse effect on the employee's performance of his daily tasks; and (5) the nature of the speech in terms of the employee's status as a professional or as a private citizen. ***Pickering v. Board of Education***, 391 U.S. 563 (1968).

A public college instructor's use of abusive and profane language in the classroom is not constitutionally protected speech. ***Martin v. Parrish***, 805 F.2d 583 (5th Cir. 1986).

Genuine issues of fact regarding whether a tenured law school faculty member was terminated for exercising his right of free speech and whether his substantive due process rights were violated precluded the granting of summary judgment in favor of university officials. ***Honore v. Douglas***, 833 F.2d 565 (5th Cir. 1987).

A professor's conduct, in which he made allegations of conspiracy against various state, federal, and university officials, provided sufficient reason for initiating censure and dismissal proceedings. The allegations were not even remotely associated with protected first amendment rights. ***Fong v. Purdue Univ.***, 692 F. Supp. 930 (N.D. Ind. 1988).

Summary judgment in favor of a university, which had allegedly denied promotion to a math instructor for having exercised his right to free speech and to access to the courts by filing a lawsuit, was reversed and remanded because many of the instructor's statements addressed matters of public concern. ***Kurtz v. Vickrey***, 855 F.2d 723 (11th Cir. 1988).

Five tenured engineering professors were involuntarily transferred to other departments within a public university. Although one of them had addressed a matter of public concern, the orderly administration of the department outweighed the professor's interest in speaking on the quality of education provided at a state-sponsored institution. ***Maples v. Martin***, 858 F.2d 1546 (11th Cir. 1988).

Contractual Issues

Upon a tenured faculty member's refusal to report to a nonteaching work assignment, college officials must provide a hearing to determine whether the instructor had resigned or was terminated. The court discussed various forms of discharge at length, including outright discharge, coerced resignation, constructive discharge, and constructive resignation. ***Patterson v. Portch***, 853 F.2d 1399 (7th Cir. 1988).

Discipline/Termination

Financial Exigency

Dismissals based upon reasons of financial exigency are impersonal and unrelated to the views of the dismissed faculty member. ***Sacchini v. Dickinson State College***, 338 N.W.2d 81 (N.D. 1983).

The discharge of a tenured faculty member was upheld where evidence revealed that the money allocated by the legislature was insufficient to continue the program of which the faculty member had been a part. Other evidence supporting the dismissal was the fact that the college's advisory committee and the faculty association determined that the program should be eliminated because it was not meeting the needs of students or the community. ***Unterschuetz v. Board of Trustees***, 688 P.2d 512 (Wash. Ct. App. 1984).

Incompetence

Requiring a chemistry instructor to perform experiments which she taught over a number of years in an effort to determine whether she was unfit for service was not unfair. The experiments were the subject of complaints regarding the instructor's competency, and the instructor had declared her proficiency in performing the experiments. ***Bevli v. Brisco***, 212 Cal. Rptr. 36 (Ct. App. 1985).

Where a tenured university professor is discharged for failing to complete the duties of his position in a satisfactory manner, the courts will not review the university's determination unless the professor can show that he was not afforded due process or was dismissed for a constitutionally impermissible reason. ***King v. University of Minn.***, 774 F.2d 224 (8th Cir. 1985).

A tenured university professor who fails to maintain acceptable institutional standards governing classroom teaching, participation in institutional affairs, and scholarly activities, may be dismissed for failure to perform the duties for which he was employed. The university's decision to terminate is rationally related to its responsibility to maintain minimum academic standards. ***Riggin v. Board of Trustees***, 489 N.E.2d 616 (Ind. Ct. App. 1986).

Insubordination

Substantial evidence supported complaints that tenured community college nursing faculty engaged in "conduct detrimental to the nursing program" and refused to "cooperate with and maintain harmony among the staff;" thus, their terminations were justified. Allegations that the board of trustees failed to consider all evidence were untenable because an administrative body performing a quasi-judicial function is not subject to inquiry concerning its mental processes in reaching its decision to terminate. ***Kelly v. Kansas City***, 648 P.2d 225 (Kan. 1982).

A tenured university professor was insubordinate when he was absent from his assigned campus responsibilities after his request to be absent was specifically denied. University officials did not infringe on his academic freedom when they denied his request to travel to Israel to deliver a lecture because the denial was grounded in the professor's responsibility to his students, not in any infringement of his right to free speech. Since there were compelling state interests in denying the travel request and since the professor had been subject to disciplinary measures previously for similar misconduct, termination was not an excessive disciplinary action, did not deny substantive due process, and did not impose a prior restraint or censure on his research and teaching activities. ***Stastny v. Board of Trustees***, 647 P.2d 496 (Wash. Ct. App. 1982).

A university was justified in terminating a tenured music professor when he persistently flouted the authority of the music department director and assistant director, and refused to meet with his scheduled classes. ***Smith v. Kent State Univ.***, 696 F.2d 476 (6th Cir. 1983).

Moral Turpitude

A tenured professor who was terminated for making sexual advances toward his male students had sufficient notice of the standard to which he was being held since the university had specific, written standards of professional ethics governing its faculty. The fact that he was the first faculty member ever disciplined for this conduct was irrelevant since common sense, reason, and good judgment should have made him aware that his behavior could be a cause for termination. ***Korf v. Ball State Univ.***, 726 F.2d 1222 (7th Cir. 1984).

Despite a psychologist's opinion that a community college instructor could be rehabilitated without presenting a danger to himself or others, the district personnel commission did not abuse its discretion when it dismissed the instructor for sexually assaulting his student laboratory assistant. ***Cockburn v. Santa Monica Community College Dist. Personnel Comm'n***, 207 Cal. Rptr. 589 (Ct. App. 1984).

Evidence that a tenured university professor solicited sexual activity in a student union restroom and engaged in homosexual acts established

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adequately that his conduct involved moral turpitude as defined by a teachers association's guidelines. ***Corstvet v. Boger***, 757 F.2d 223 (10th Cir. 1985).

Evidence concerning a tenured professor's classroom conduct, opinions offered by his colleagues addressing his competence and alleged plagiarism, and results from student evaluation surveys were sufficient to support the university's decision to terminate the professor's employment. ***Agarwal v. Regents of Univ. of Minn.***, 788 F.2d 504 (8th Cir. 1986).

Neglect of Duty

A faculty member accepted an academic assignment to develop two graduate nursing courses and subsequently failed to complete the assignment. The decision of university officials to terminate was not arbitrary or capricious, or characterized by an abuse of discretion. ***Josberger v. University of Tenn.***, 706 S.W.2d 300 (Tenn. Ct. App. 1985).

There was a genuine issue of material fact whether a tenured mathematics professor's failure to teach constituted neglect of his professional duties. He refused to teach a class in which a student had verbally attacked him. The instructor argued that university officials refused to discipline the student and establish an academic atmosphere conducive to teaching and learning. ***McConnell v. Howard Univ.***, 818 F.2d 58 (D.C. Cir. 1987).

Collective Bargaining

Bargaining Unit

If a collective bargaining agent charges faculty a mandatory service fee, individual faculty members are permitted to obtain rebates for fees used for ideological activities unrelated to collective bargaining issues. ***Abood v. Detroit Bd. of Educ.***, 431 U.S. 209 (1977).

Courts may uphold the National Labor Relations Board's exercise of its authority over faculty in religiously operated schools, when its action interferes with the freedom of religious officials to operate their schools in accord with their religious tenets, only if there is evidence that Congress clearly intended for the NLRB to exercise such jurisdiction. ***NLRB v. Catholic Bishop of Chicago***, 440 U.S. 490 (1979).

Faculty at a "mature" private institution who exercise substantial administrative decisionmaking are endowed with managerial status sufficient to exempt them from coverage by the Taft-Hartley Act. Thus, officials at such institutions may not be required to bargain collectively with faculty meeting this criterion. ***NLRB v. Yeshiva Univ.***, 444 U.S. 672 (1980).

The faculty of a private, proprietary art academy, who have no input into policy decisions or who do not engage in management-level decisionmaking, are employees subject to coverage by the Taft-Hartley Act. Officials at such "immature" institutions must collectively bargain with the faculty. ***Stephens Inst. v. NLRB***, 620 F.2d 720 (9th Cir. 1980).

The faculty of a private liberal arts college, who participated in college governance through a committee structure and who were limited to participation in hiring and curriculum development kinds of decisionmaking within a specific program, are subject to coverage by the Taft-Hartley Act and must be allowed to bargain collectively. ***Loretto Heights College v. NLRB***, 742 F.2d 1245 (10th Cir. 1984).

If professional employees forming an appropriate bargaining unit have selected an exclusive representative for mandatory bargaining, their employer may exchange views on nonmandatory subjects only with the exclusive representative. Such a restriction does not violate the constitutional rights of employees within the bargaining unit who are not members of the exclusive representative and who may disagree with its views. ***Minnesota State Bd. for Community Colleges v. Knight***, 465 U.S. 271 (1984).

Under an agency shop agreement, procedural safeguards are necessary to prevent the compulsory subsidization of a union's ideological activities by objecting nonunion employees. If a union's procedures failed to: (1) minimize the risk that nonunion employees' contributions might be used temporarily for impermissible purposes; (2) provide nonmembers with adequate information regarding the basis for the proportionate share from which the advance deduction of fees was calculated; and (3) provide for a reasonably prompt decision by an impartial decisionmaker, those procedures were constitutionally inadequate. ***Chicago Teachers Union, Local No. 1 v. Hudson***, 106 S. Ct. 1066 (1986).

The act of individual faculty members meeting with community college officials to discuss complaints of the faculty over a two-year period does not establish an intent to organize a faculty union. Thus, a reduction in the teaching schedule of one of the faculty members does not entitle her to protection under a state law designed to protect those who wish to organize a union. ***Rosen v. Public Employment Relations Bd.***, 530 N.Y.S.2d 534 (1988).

The board had properly considered and assigned weight to various statutory criteria. A state board of employment relations' conclusion that a proposed bargaining unit was inappropriate was a legitimate and rational exercise of its discretionary authority. ***University of Or. Chapter, A.F.T. v. University of Or.***, 759 P.2d 1112 (Or. Ct. App. 1988).

Directors of applied research and service centers have duties and responsibilities which are managerial for purposes of proposed university faculty bargaining units. Although the directors share a "community of interest" with other university faculty, they should not be placed in a position which would require them to divide their loyalty to the administration with their loyalty to an exclusive bargaining representative. Thus, they are subject to the managerial exclusion in the state educational labor relations act. ***Board of Regents v. Illinois Educ. Labor Relations Bd.***, 520 N.E.2d 1150 (Ill. App. Ct. 1988).

A state university system's refusal to permit a union to use the university's internal mail system to carry unstamped letters from the union to certain university employees when the union was attempting to organize did not violate state labor relations law. The university would have violated the Private Express Statutes if it had delivered the union letters because such communication was not related closely enough to the university's current business; rather, it was related to the union's current business. ***Regents of Univ. of Cal. v. Public Employment Relations Bd.***, 108 S. Ct. 1404 (1988).

Grievance Procedures

Courts should give substantial deference to an arbitrator's interpretation of the provisions of a collective bargaining agreement where he follows sound judicial standards. Here, the arbitrator identified inequities in the salaries of three faculty members and ordered merit raises. ***Trustees of Boston Univ. v. Boston Univ. Chapter, AAUP***, 746 F.2d 924 (1st Cir. 1984).

A majority of arbitrators agreed that a community college had violated its collective bargaining agreement and concurred with the award of compensation to the professor aggrieved by the violation. Further, the mere fact that one of the arbitrators disagreed with a portion of another arbitrator's reasoning in reaching the same conclusion does not alter the validity of the award. ***Rockland Community College Fed'n of Teachers, Local 1871 v. Board of Trustees***, 531 N.Y.S.2d 117 (App. Div. 1988).

If a collective bargaining agreement provides that the dismissal of a probationary employee during or at the end of the six-month working test period is not grievable or arbitrable, an arbitrator who determines that a dispute concerning the termination of a probationary community college employee is arbitrable has exceeded her legal authority. ***State v. AFSCME, Council 4***, 537 A.2d 517 (Conn. App. Ct. 1988).

A public university employee accused of wrongdoing was improperly refused the opportunity to have a grievance processed. The principle of *res judicata* precludes an arbitrator from determining issues of good cause for the discharge of university employees after the employee elected to follow civil service discharge procedures. ***Board of Governors of State Colleges & Univ. ex. rel. Northeastern Ill. Univ. v. Illinois Educ. Labor Relations Bd.***, 524 N.E.2d 758 (Ill. App. Ct. 1988).

The federal district courts lack subject matter jurisdiction to review an advisory opinion of the National Labor Relations Board which was issued in accordance with the board's own regulations. Further, a university is a political subdivision of the state and cannot be an employer within the meaning of the National Labor Relations Act. ***University of Vt. v. State***, 748 F. Supp. 235 (D. Vt. 1990).

Negotiations

Tenure and promotion, faculty evaluation, and academic calendar issues are not terms and conditions of employment which must be negotiated but are matters of inherent managerial policy. ***University Educ. Ass'n v. Regents of Univ. of Minn.***, 353 N.W.2d 534 (Minn. 1984).

A clause in a contract between a faculty union and a state community college providing that the negotiated agreement was "subject to all present and future acts of the legislature" did not make an agreed-upon salary increase contingent upon the availability of legislative appropriations when explicit language to that effect was absent. A subsequent legislative act which canceled the negotiated salary increase was an unconstitutional impairment of a contract because the state was fully aware of its financial problems before it entered into the contract. ***Carlstrom v. State***, 694 P.2d 1 (Wash. 1985).

A community college's "threat" to layoff employees if the union refused to accept a freeze on wages did not impose a chilling effect on the union members' collective bargaining rights. The union membership unanimously rejected the proposed wage freeze so that the threat of layoffs did not force the membership to abandon its union leadership nor to refrain from exercising its collective bargaining rights. ***Schoolcraft College Ass'n of Office Personnel/MESPA v. Schoolcraft Community College***, 401 N.W.2d 915 (Mich. Ct. App. 1986).

The act of a public technical college president who unilaterally issued guidelines for faculty workloads violated the college's obligation to bargain changes in the conditions of employment. The guidelines also afforded the academic dean more authority than was granted by the college's negotiated

agreement with the faculty union. ***Vermont State Colleges Faculty Fed'n v. Vermont State Colleges***, 547 A.2d 1340 (Vt. 1988).

Defamation

A statement in an annual report of a pharmacy college indicating that an instructor had been "terminated" is neither *libel per se* nor *per quod*. ***Elias v. Youngken***, 493 A.2d 158 (R.I. 1985).

A college president's communication to an instructor, informing the instructor that he was dismissed for insubordination, neglect of duty, and immorality (including bribery), was in the course of a quasi-judicial tenure proceeding subject to an absolute privilege in the instructor's defamation suit. The privilege would be lost only if the communication were improperly disclosed or if the president had acted with malice. ***Webster v. Byrd***, 494 So. 2d 31 (Ala. 1986).

A faculty member consented to the publication of a memorandum in which members of his department called for his removal. The memorandum is not defamatory because the faculty member failed to show malice on the part of school officials. School officials were also shielded by a qualified privilege. ***Dominguez v. Babcock***, 727 P.2d 362 (Colo. 1986).

A college president's statement to a third party in a restaurant that the dean of students was a convicted felon constituted slander. Shortly after the statement, the dean's interaction with colleagues ceased. Within two months, he was dismissed. The court concluded that the president's statement injured the dean's good name and reputation. ***Joseph v. Elam***, 709 S.W.2d 517 (Mo. Ct. App. 1986).

A department chair's written recommendation against a faculty member's promotion, because of a lack of scholarly publications, was a statement of opinion based upon materials submitted by the faculty member. Even if the recommendation was one of fact, the chair was protected by a qualified privilege since his position imposed upon him a duty to comment frankly on the merits of applicants for promotion within the department. ***Belliveau v. Rerick***, 504 A.2d 1360 (R.I. 1986).

A department chair's characterization of a former faculty member as a "clown" is mere name-calling or a general insult which is not to be taken literally and is not susceptible to a defamatory meaning. Since the statement makes no reference to the faculty member's teaching abilities or to his scholarly reputation, it is not actionable. ***Depuy v. St. John Fisher College***, 514 N.Y.S.2d 286 (App. Div. 1987).

A department chair's unfavorable memorandum addressing the qualifications of a faculty member for promotion consisted of statements of opinion only and is thus not actionable. ***Gernander v. Winona State Univ.***, 428 N.W.2d 473 (Minn. Ct. App. 1988).

A university was liable for maximum tort damages of $20,000 based on the conduct of a supervisor of a university employee who informed a prospective employer that the subordinate was dishonest with money with the result that the subordinate was not hired. The supervisor's comments were sufficiently related to the educational work of the university to make them part of an activity carried on to accomplish directly the university's mission and invoke a statutory damages limit designed to protect charitable organizations. ***St. Clair v. Trustees of Boston Univ.***, 521 N.E.2d 1044 (Mass. App. Ct. 1988).

Statements made by a college dean recommending against tenure were protected by a qualified privilege and could not serve as the basis of a defamation action. There was no publication of the recommendation beyond those individuals with direct and legitimate interests in the tenure proceedings, and there was no showing that the dean acted with malice. ***Staheli v. Smith***, 548 So. 2d 1299 (Miss. 1989).

Privacy Issues

While placed on administrative leave pending an investigation of various charges of misconduct, a state employee's office was searched by institution officials. Despite the lack of a written policy, such a search is not unlawful if there is a reasonable belief that government property which needed to be secured was in the office. The issues of law are the determination of the justification of the search and the evaluation of the reasonableness of the inception and scope of the search. ***O'Connor v. Ortega***, 480 U.S. 709 (1987).

A government agency's written contract with a private investigator, reserving the agency's unqualified ownership of all materials obtained or created during an investigation, qualifies the documentation as "governmental data" subject to disclosure under the state's government data practices act. This action arose when an unsuccessful applicant for employment at a state university sought to compel the disclosure of information gathered during a background check. ***Pathmanathan v. St. Cloud State Univ.***, 461 N.W.2d 726 (Minn. Ct. App. 1990).

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DISCRIMINATION IN EMPLOYMENT

ELEVENTH Series, Number 5

Prepared by Robert M. Hendrickson, Professor-in-Charge
Higher Education Program, Penn State University

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The Civil Rights Restoration Act

In 1988, Congress adopted and the President signed into law the Civil Rights Restoration Act. The Act redefines the meaning of a program or activity receiving federal financial assistance to include any program, foundation, corporation, or state educational system in which a unit or activity of the organization receives federal financial assistance. The scope of the coverage of the Act was, therefore, expanded to cover the whole organization, not just the specific program or activity which received the federal money. The Act covers title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Rehabilitation Act of 1973. ***Civil Rights Restoration Act of 1987 P.L. 100-259 (1988).***

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 states:

> No person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. **(42 U.S.C. 2000I *et seq.)***

The North Carolina State University operated an Extension Service through county agents who promoted home economics, agriculture, 4-H and community resource development. Until August of 1965, the university operated separate branches of the extension service for blacks and whites, at which time they were merged into one extension service for the state. Plaintiffs in this case brought suit alleging disparity in salaries between white and black county agents and the continuation of all black 4-H clubs and other services. The plaintiffs presented a multiple regression analysis to substantiate the salary disparity. The Supreme Court ruled that salary disparity based on race which was the result of salary disparities existing prior to the enactment of anti-discrimination legislation required eradication. Further, the Court found that the array of variables included in a multiple regression analysis would affect the probativeness of the multiple regression analysis but not its admissibility. Finally, the Court ruled that positive steps which resulted in the enactment of public policies designed to "disestablish" the dual system of extension services was enough to bring the university and the state into conformity with the requirements of federal statutes and regulations. ***Bazemore v. Friday***, 106 S. Ct. 3000 (1986).

The Adams Litigation

In 1970, a suit was brought to force the Department of Health, Education, and Welfare (HEW) to enforce the provisions of title VI. The plaintiff charged that HEW continued to avoid enforcement by awarding federal financial assistance to ten state systems of education which maintained segregated public schools, colleges, and universities. The court ordered the enforcement of title VI. ***Adams v. Richardson***, 351 F. Supp. 636 (D.D.C. 1973).

Subsequent proceedings resulted in the court issuing an order requiring seventeen states to develop plans in cooperation with HEW to dismantle their dual systems of higher education. ***Adams v. Richardson***, 356 F. Supp. 92 (D.D.C. 1973), *aff'd*, 480 F.2d 1159 (D.C. Cir. 1973).

The coverage of the court order was expanded to cover all fifty states under certain circumstances and a consent decree incorporated that expansion in ***Brown v. Weinberger***, 417 F. Supp. 215 (D.D.C. 1976). ***Adams v. Califano***, 430 F. Supp. 118 (D.D.C. 1977).

In 1983, the court refused to block a negotiated settlement between HEW and North Carolina by affirming a North Carolina federal district court decision. ***Adams v. Bell***, 711 F.2d 161 (D.C. Cir. 1983).

Emanating from the above litigation was an attempt by the plaintiffs to amend the consent decree. The result was that on appeal the defendant, the United States government, raised the question of the plaintiffs' standing to litigate and the court's authority, under the separation of powers provisions of the Constitution, to issue an order involving the administration of a federal agency. The case was remanded to the district court with instructions to address both the standing and separation of powers issues. ***Women's Equity Action League v. Bell***, 743 F.2d 42 (D.C. Cir. 1984).

On remand, the original judge reversed his previous decisions, thereby vacating seventeen years of court-ordered monitoring of title VI enforcement and compliance by the Office of Civil Rights. He ruled that the plaintiffs lacked standing because there was no nexus between the receipt of federal funds and discrimination by the state system of higher education. He also ruled that the continual monitoring of agency enforcement violated the separation of powers provisions of article III. ***Adams v. Bennett***, 675 F. Supp. 668 (D.D.C. 1987).

On appeal to the circuit court, the court found that the plaintiffs had standing as aggrieved parties by demonstrating the nexus between governmental action and the harm inflicted on them. The court

postponed the question of separation of powers under article III to the 1990 term. ***Women's Equity Action League v. Cavazos***, 879 F.2d 880 (D.C. Cir. 1989).

In the 1990 term, the court completed its ruling in the *Adams* litigation. In this ruling, the court found that ***Cannon v. University of Chicago***, 441 U.S. 677 (1979), which established a private right of action in title IX cases, was pivotal to the ruling in this title VI case. The court noted that *Cannon* establishes the premise that this type of private action must be clearly authorized by Congress. In this case, the court found no evidence to support a Congressional intent to allow this "broad-gauged action" against a federal agency under title VI. The court noted that while Congress has the right to authorize such broad-gauged action, it did not establish such rights when passing title VI. Plaintiffs therefore, lacked the private right to pursue this action against a federal agency. ***Women's Equity Action League v. Cavazos***, 906 F.2d 742 (D.C. Cir. 1990).

State System Litigation

Alabama

In 1985, the United States and other plaintiffs (the Knight Interveners) brought a suit against the state of Alabama and its system of higher education. They claimed that the state had failed to disestablish its dual system of higher education in violation of the provisions of title VI. The court reviewed the state system and analyzed the historical and policy developments to date which would indicate whether the state had attempted to disestablish the dual system. The court found funding policies which favored whites and predominantly white institutions, the establishment of two new campuses administered by the predominantly white institutions in cities where predominantly black institutions were located, and enrollment and staffing patterns which indicated that the state had failed to disestablish the dual system of higher education. The court ordered the state to develop a plan to eliminate the dual system. ***United States v. Alabama***, 628 F. Supp. 1137 (N.D. Ala. 1985).

In 1986, the Alabama State Board of Education refused to re-certify certain teacher education programs at Alabama State University (ASU), a predominantly black institution. ASU and certain state citizens petitioned and were granted injunctive relief by the federal district court. On appeal the circuit court ruled that ASU lacked standing under title VI to sue. However, the court affirmed the authority of the other private citizens to maintain an action against the state board in this case. ***United States v. Alabama***, 791 F.2d 1450 (11th Cir. 1986), *cert. denied*, 107 S. Ct. 1287 (1987).

The 1985 decision was reversed and remanded on appeal. Two questions were before the court. One was whether the district court judge should have recused himself based on his connections with one of the state institutions. The court found that the fact the judge had children at a public institution did not bias his judgment. However, the fact that he was deeply involved in legislative activity and earlier litigation as a private lawyer mandated that he disqualify himself from deciding this case. The second question involved the program specific nature of title VI which barred a suit against the system but not a suit naming specific programs receiving federal financial assistance. However, subsequent passage of the Civil Rights Restoration Act (1988) resulted in additional pending litigation. ***United States v. Alabama***, 828 F.2d 1532 (11th Cir. 1987).

In a case involving a hearing on whether a vocational technical college had achieved compliance with title VI, the judge who had been ordered to recuse himself in a previous case, recused himself from a decision in this case under protest. ***Lee v. Macon County Bd. of Educ.***, 681 F. Supp. 730 (N.D. Ala. 1988).

In a subsequent hearing, a judge found that the state technical college had established itself as a racially desegregated institution in compliance with the previous court order [see ***Lee v. Macon County Bd. of Educ.***, 267 F. Supp. 458 (M.D. Ala. 1967)]. The ordered supervisory jurisdiction by the district court was removed. ***Lee v. Macon County Bd. of Educ.***, 692 F. Supp. 1277 (N.D. Ala. 1988).

Georgia

Black citizens attempted to intervene in a consent decree which ordered the integration of a predominantly black college. White citizens had successfully sought the decree. The black interveners alleged that new evidence, i.e., the resignation of the college president, significantly altered the agreement. The court ruled that the president's resignation did not in any way affect the issues surrounding the consent decree. ***Hunnicutt v. Board of Regents***, 122 F.R.D. 605 (M.D. Ga. 1988).

Tennessee

Public institutions of higher education were under a consent decree requiring the use of racial quotas to disestablish the dual system of higher education within the state [see ***Sanders v. Ellington***, 288 F. Supp. 937 (M.D. Tenn. 1968); ***Geier v. Dunn***, 337 F. Supp. 573 (M.D. Tenn. 1972); ***Geier v. Blanton***, 427 F. Supp. 644 (M.D Tenn. 1977); ***Geier v.***

University of Tenn., 597 F.2d 1056 (6th Cir. 1979), *cert. denied*, 444 U.S. 886 (1979); ***Geier v. Alexander***, 593 F. Supp. 1263 (M.D. Tenn. 1984)]. After protracted litigation and negotiations, all parties reached an agreement on a plan to integrate the Tennessee system of higher education (except the United States which objected to the use of racial quotas). The circuit court ruled that under these circumstances the use of quotas to eliminate court-discovered past practices of discrimination was appropriate and within the discretion of the district court. ***Geier v. Alexander***, 801 F.2d 799 (6th Cir. 1986).

In subsequent litigation, the district court awarded the payment of attorneys' fees by the United States to the original interveners. The circuit court affirmed the award. ***Geier v. Richardson***, 871 F.2d 1310 (6th Cir. 1989).

Louisiana

At issue was whether the state had disestablished its dual system of public higher education. The court, rejecting the *Bazemore* test used by the Mississippi federal district court, found that the state had failed to disestablish the dual system of higher education as evidenced by the enrollments at the historically black and white institutions, the duplication of programs, and the failure to establish a single state coordinating agency for all public higher education. The subsequent court order dismantled the old state system (which had four boards), established a single board of higher education, dictated the membership of the board, set specific policies for admission, established procedures for the recruitment of faculty and students, and eliminated or consolidated academic programs. ***United States v. Louisiana***, 692 F.Supp. 642 (E.D. La. 1988) (the court order), ***United States v. Louisiana***, 718 F. Supp. 521 (E.D. La. 1989), *modifying the court order*, ***United States v. Louisiana***, 718 F. Supp. 525 (E.D. La. 1989).

Black plaintiffs sued to stop the elimination of programs at historically black institutions which were based on the court order. They claimed that the black institutions were discriminated against and that the institution's due process rights had been violated in the court-ordered elimination of certain programs. The court found no constitutional basis for either claim. ***United States v. Louisiana***, 692 F. Supp. 642 (E.D. La. 1990), *appeal dismissed*, 110 S. Ct. 708 (1990).

Mississippi

Questions of whether the state had dismantled its dual system of higher education were brought to the court. At issue was whether vestiges of the dual system represented a failure to comply with title VI. The court reviewed the policies and practices of the state and found that it had made good faith efforts to disestablish its dual system of higher education. The court, citing *Bazemore*, focused on state polices which eliminated duplication in programs, active recruitment of faculty and students from the non-predominant race, and equity in funding and facilities; however, on appeal this ruling was reversed. The circuit court found that black institutions were inferior to white institutions and that white institutions failed to effectively communicate exceptions to admissions standards for blacks. Among the court's concerns was the substantial number of black faculty at historically black institutions who did not hold the doctoral degree. ***Ayers v. Allain***, 674 F. Supp. 1523 (N.D. Miss. 1987), *rev'd*, 893 F.2d 732 (5th Cir. 1990).

Employment Discrimination

Salary discrimination was at issue in an Arkansas case. Black employees of the extension service of the university alleged that pay disparity was due to their race. The district court had awarded summary judgment to the university. The circuit court, on appeal, found that the plaintiffs had established a *prima facie* case of discrimination. Questions remained as to whether race served as a factor to disadvantage blacks in their quest for promotions. The lower court judgment was vacated and the case was remanded. ***White v. University of Ark.***, 806 F.2d 790 (8th Cir. 1986).

Retaliation

A professor charged that a university retaliated against him for his involvement in a student's title VI discrimination suit by suing him in state court for slander and defamation. The professor's request for an injunction to stop the institution's pursuit of state claims was barred by the Anti-Injunction Act. However, the professor set forth a claim for damages under the anti-retaliation provisions of title VI. ***Paisey v. Vitale***, 634 F. Supp. 741 (S.D. Fla. 1986).

Age Discrimination in Employment Act of 1975

The Age Discrimination in Employment Act of 1975 (hereinafter ADEA) states:

> No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance. **(42 U.S.C. 6102)**.

Jurisdiction

The United States Supreme Court ruled that the federal district court had the discretion to remand a case to state court when federal claims have been withdrawn. The plaintiffs had filed federal age discrimination claims along with state claims of wrongful discharge, intentional infliction of emotional distress, defamation and breach of contract. After the plaintiffs withdrew their age discrimination claims, the district court remanded the case to state court for adjudication of pendent state claims. Under the doctrine of pendent jurisdiction, the Court found that the federal district court had the authority to remand the case to state court for further adjudication of the remaining state claims. ***Carnegie-Mellon Univ. v. Cohill***, 108 S. Ct. 614 (1988).

A New York federal district court ruled that the university was the employer for a research project it was conducting but which was funded by a utility company. However, the plaintiff failed to establish a cause of action under the ADEA. The plaintiff, who had applied for a research position on the project, claimed that he was unsuccessful in acquiring the position because of his age. The Equal Employment Opportunities Commission filed charges with the New York State Human Rights Division, which, upon investigation, notified the plaintiff of "no probable cause" of age discrimination. Plaintiff then proceeded *pro se* to file on two counts. ***Heckman v. State Univ.***, 737 F. Supp. 177 (N.D.N.Y. 1990).

A former employee claimed that his dismissal was based on his age and filed both an ADEA claim and state claim of wrongful discharge. The EEOC, unable to substantiate the claim of age discrimination, declined to proceed further on plaintiff's allegation. The federal district court ruled that the ADEA claim could not serve as the basis for a state claim of wrongful discharge. ***Leathem v. Research Found.***, 658 F. Supp. 651 (S.D.N.Y. 1987).

A Catholic university challenged the jurisdiction of the ADEA over religious-affiliated institutions. The school claimed that the first amendment separation of church and state clauses exempted these institutions from ADEA. Citing ***NLRB v. Catholic Bishop of Chicago***, 440 U.S. 490 (1979), the court found that a determination should be made by weighing the facts and circumstances presented by each case. The court found that the enforcement of ADEA would not entangle the government in the affairs of the institution so as to endanger the protections mandated by the first amendment. The court noted that this ruling was similar to the ruling in another case, i.e., ***Ritter v. Mt. St. Mary's College***, 814 F.2d 986 (4th Cir. 1987). The court also noted that the potential for entanglement under future circumstances should not affect the court's ruling in this case. ***Soriano v. Xavier Univ.***, 687 F. Supp. 1188 (S.D. Ohio 1988).

A procedural question was raised by a Massachusetts claim. In this age discrimination claim, a jury found that the employer had not violated the ADEA by giving this plaintiff employee substantially lower salary increases than other employees. The court found that the failure of plaintiff's counsel to be present during a third set of jury instructions and failure of the judge to accept an objection by plaintiff's counsel over the phone was not procedural error. The court also found that the plaintiff was not entitled to the admission of three specific administrative reports which were part of the EEOC investigation file. ***Smith v. Massachusetts Inst. of Technology***, 877 F.2d 1106 (1st Cir. 1989).

A West Virginia faculty member challenged the state legislature's Higher Education Full-Time Faculty Salaries Act as a violation of the ADEA. The court ruled that the doctrine of legislative immunity barred this action. ***Nuchims v. West Virginia***, 724 F. Supp. 1219 (S.D. W. Va. 1989).

In Utah, the court ruled that the trial court was not limited to the findings and determination of the state's industrial commission. The trial court, after a complete review of the industrial commission's report, could allow additional testimony from witnesses. Further, the court was not bound to follow the industrial commission's ruling. ***University of Utah v. Industrial Comm'n of Utah***, 736 P.2d 630 (Utah 1987).

In 1985, upon reaching his seventieth birthday, the plaintiff was automatically retired from his administrative position under existing institutional policies. The position was opened and the plaintiff's application for the position was bypassed for a younger individual. The plaintiff claimed age discrimination in his forced retirement and retaliation for this claim in the institution's refusal to interview him for the vacant position. The circuit court affirmed the lower court's grant of summary judgment for the institution. The court found no violation of ADEA since institutions are exempt from the full force of ADEA until 1994. Further, the court found no property right in continued employment after age seventy, and the plaintiff failed to support a claim of retaliation. ***Evans v. Pugh***, 902 F.2d 689 (8th Cir. 1990).

A seventy-year old adjunct instructor was refused further employment contracts due to her advanced age. The court found that a previous settlement negotiated at age sixty-five, in which she agreed to cease federal ADEA action if the institution continued to employ her as an adjunct instructor, did not preclude her ability to file an age

discrimination claim for the institution's current employment actions. ***Jochnowitz v. Russell Sage College***, 523 N.Y.S.2d 656 (App. Div. 1988).

Tolling

The plaintiff charged that she had been moved to another administrative position and replaced by a younger administrator in violation of the ADEA. The defendant institution filed for dismissal on the grounds that the plaintiff had failed to file charges within the 180-day period provided by the ADEA. The court found that Puerto Rico was a "deferral" state under ADEA. Puerto Rico petitioners must file their claims within 300 days of the violation. ***Astacio-Sanchez v. Fundacion Educativa Ana G. Mendez***, 724 F. Supp. 11 (D.P.R. 1989).

Proof Strategy

An unsuccessful applicant for a community college position had established a *prima facie* case for both age and gender discrimination. The court ruled that the district court erred in granting a summary judgment to the defendant institution when its evidence failed to negate material questions requiring litigation on the merits. ***Burns v. Gadsden State Community College***, 908 F.2d 1512 (11th Cir. 1990).

A forty-nine year old dean of students was removed from his position and replaced by a forty year old administrator. The plaintiff charged that this employment action was a violation of ADEA. The court found that the mere fact that the plaintiff's position was replaced with a younger employee was not enough to establish a *prima facie* case of discrimination, the first step in the shifting burden of proof strategy used in ADEA cases. ***Greaves v. Jefferson State Junior College***, 494 So. 2d 409 (Ala. 1986).

In Minnesota, an administrator failed to establish a *prima facie* case for discrimination based on age. Further, the institution had provided valid job-related reasons for the termination. ***Reddemann v. Minnesota Higher Educ. Coordinating Bd.***, 811 F.2d 1208 (8th Cir. 1987).

An unsuccessful applicant for a part-time teaching position charged age discrimination in the failure of an institution to hire him for a full-time position for which he never made application. The court ruled that under the disparate treatment theory, he failed to establish a *prima facie* case for discrimination since he not only failed to apply for the position but he was also not qualified for the position. Further, the court found that the plaintiff failed under the disparate impact theory to show that the institution favored younger applicants in its hiring. ***Levy v. Regents of the Univ. of Cal.***, 245 Cal. Rptr. 576 (Ct. App. 1988).

A Wisconsin university employee was able to establish a *prima facie* case of discrimination. However, the defendant institution provided valid job-related reasons for her termination. They claimed that she was unable to complete routine assignments, avoided work, and performed work incorrectly. The court affirmed both the arbitrator's findings and the lower court judgment in favor of the defendant institution. ***Johnson v. University of Wis.-Milwaukee***, 783 F.2d 59 (7th Cir. 1986).

An unsuccessful applicant for a university position in Kansas alleged age discrimination in violation of state statutes. The court found that while the applicant had established a *prima facie* case for age discrimination, the institution had presented valid nondiscriminatory reasons for passing over this applicant. ***Kansas State Univ. v. Kansas Comm'n on Civil Rights***, 796 P.2d 1046 (Kan. Ct. App. 1990).

A food service director was terminated after he was warned about the manner in which he supervised his employees. The plaintiff failed in his burden to show that the job-related reasons for his termination were a mere pretext for discrimination. ***Grimwood v. University of Puget Sound***, 753 P.2d 517 (Wash. 1988).

Denial of Benefits

A professor charged that the institution failed to notify him that the employer contribution to his pension plan would cease at age sixty-five. The institution noted that the plaintiff had served on a collective bargaining committee which negotiated these provisions. The fact that the employee contribution ceased at sixty-five was in a variety of documents given to faculty including an annual fringe benefit report forwarded to all employees. The court found that the notice to cease pension plan payments at age sixty-five was adequate under the provisions of ADEA. ***Kadane v. Hofstra Univ.***, 682 F. Supp. 166 (E.D.N.Y. 1988).

The question of whether an early retirement plan penalized those who chose not to retire early and, therefore, was a subterfuge for age discrimination arose in this case. The institution's plan reduced the sick pay benefits and insurance benefits after age sixty-four for those who failed to choose early retirement. The appeals court reversed a lower court summary judgment for the institution and remanded the case for determination on the merits. Instructions to the lower court included the mandate to investigate whether the reduction in benefits is a function of cost, i.e., such benefits cost more for older workers, rather than a subterfuge for age discrimination. Cost reduction, if substantiated, would be a valid reason for designing the plan this way. ***Karlen v. City Colleges***, 837 F.2d 314 (7th Cir. 1988).

An Indiana employee lost his claim which alleged that the employer discriminated on the basis of age when the employer's contribution to a benefit plan ceased at age sixty-five. The court found that the intent of the federal statute was to allow the employer to cease employer contributions to an employee benefit plan at the normal retirement age. ***Bell v. Trustees of Purdue Univ.***, 658 F. Supp. 184 (N.D. Ind. 1987).

An Illinois early retirement plan which differentiated based on age in the contribution to a benefits plan was upheld by a federal court. ***EEOC v. City Colleges***, 740 F. Supp. 508 (N.D. Ill. 1990).

Damage Awards

A federal court ruled that an award for damage to one's good name, reputation, professional standing, and the infliction of emotional distress could not be recovered under ADEA. The plaintiff, a physician, could not show any out-of-pocket loss when he was removed from the position of Director of the Division of Radiation Therapy. ***McLaren v. Emory Univ.***, 705 F. Supp. 563 (N.D. Ga. 1988).

A defendant college was found to have discriminated on the basis of age in the termination of an employee. The court ruled that the jury could award both back pay and liquidated damages. The court also found that the plaintiff was entitled to prejudgment interest on the back pay or compensatory award. The rate of the interest would be the same as the post-judgment interest. ***Price v. Arkansas College***, 683 F. Supp. 712 (E.D. Ark. 1988).

In a state case, the court ruled that a plaintiff found to be the victim of age discrimination was given an inappropriate damage award by the court. The appeals court found that it was improper to reinstate the instructor as an employee since he was not qualified to teach the courses currently being offered. Further, the court found that a $5000 award for humiliation and mental anguish for the nonrenewal of his contract was adequate. ***State Univ. Agricultural and Technical College v. State Div. of Human Rights***, 520 N.Y.S.2d 814 (App. Div. 1987).

Retaliation

Illinois public institutions had negotiated a collective bargaining agreement which allowed them to cease all grievance proceedings if a plaintiff filed an age discrimination claim. The plaintiff alleged that such action amounted to retaliation. The institution argued that the purpose of the action was to reduce expensive litigation costs for both the institution and the collective bargaining agency. The federal district court refused to grant the defendant's motion to dismiss finding that the provisions of the collective bargaining agreement constituted retaliation. ***EEOC v. Board of Governors of State Colleges and Univs.***, 665 F. Supp. 630 (N.D. Ill. 1987).

In the same case, EEOC's motion for a summary judgment was denied because material issues of fact existed which warranted litigation on the merits. ***EEOC v. Board of Governors of State Colleges and Univ.***, 706 F. Supp. 1377 (N.D. Ill. 1989).

On the merits, the court found that, absent a showing of intent to retaliate, provisions which save time and money by preventing litigation in two forums simultaneously did not violate ADEA. ***EEOC v. Board of Governors of State Colleges and Univ.***, 735 F. Supp. 888 (N.D. Ill. 1990).

The Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 states:

> No otherwise qualified handicapped individual with handicaps in the United States, ... shall solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance.... **(29 U.S.C. 794(a))**

Scope and Reach of the Regulations

A handicapped individual commenced an action against the University of Alabama. This action dealt with the refusal by the University: (1) to provide free interpreter services to deaf students in classrooms; (2) to furnish auxiliary services to handicapped individuals enrolled in a non-degree program; (3) to accommodate access to certain laboratories and the swimming pool; and (4) to provide adequate transportation services to handicapped individuals. The institution challenged the regulations governing the provision of auxiliary services as going beyond the intent of Congress. The district court ruled that except in the area of transportation, the institution was in violation of the regulations. On appeal the circuit court found that Congress intended that institutions provide certain services to handicapped students, and the regulations defined by HEW to cover auxiliary services were within the scope of the legislation. The district court had appropriately found the institution in violation of the regulations. However, the issue of the institution's provisions for the transportation of handicapped students was reversed and remanded to the district court for a determination of the appropriate remedy. ***United States v. Board of Trustees***, 908 F.2d 740 (11th Cir. 1990).

Procedural Questions

Tolling was at issue in a Virginia case. The court found that the period provided under the state's Disabilities Act would be applied to the federal Rehabilitation Act. Plaintiff's failure to meet this tolling period resulted in the award of summary judgment to the defendant institution. ***Eastman v. Virginia Polytechnic Inst.***, 732 F. Supp. 665 (W.D. Va. 1990).

Employment Issues

An individual with one eye sued when he applied and was passed over for a position with a private security guard service under contract with a Department of Energy funded research lab located at a university. The security company was conforming to Department of Energy regulations when it refused to employ the handicapped individual. The district court issued a summary judgment in favor of the defendant finding that the security company was not a program receiving federal financial assistance within the meaning of the Act. On appeal, the circuit court found that the security company was involved in a procurement contract with the Department of Energy and was exempt from the handicapped law under the Department's regulations. The program specific language also struck down the plaintiff's argument that administrators of the laboratory were individually liable for the alleged discrimination. Further, the court ruled that the Civil Rights Restoration Act, which extends the scope of the regulations beyond the specific program receiving funds, was intended by Congress to be retroactive. ***DeVargas v. Mason & Hanger-Silas Mason Co.***, 911 F.2d 1377 (10th Cir. 1990).

A blind employee for the Department of Education sued when his employment was terminated. He alleged that the federal agency failed under the Rehabilitation Act to accommodate his needs by providing a voice synthesizing computer and floppy disk drives. The court found that the agency had accommodated his needs by providing readers, printing material in braille, and reducing his work load. However, even with those accommodations the employee was unable to adequately perform the work. The court ruled that low work productivity was a nondiscriminatory reason for dismissal. ***Carter v. Bennett***, 840 F.2d 63 (D.C. Cir. 1988).

In another case, a plaintiff was terminated for excessive absenteeism. The absenteeism occurred over a three-year period, and the plaintiff was adequately notified of the problem. The district court found that the plaintiff's partial vision loss did not place him under the provisions of the handicap law. Further, even if he were a handicapped individual, there was no way to make accommodations for absenteeism. ***Santiago v. Temple Univ.***, 739 F. Supp. 974 (E.D. Pa. 1990).

Student Issues

A student sued the Secretary of Education and an institution for the failure of the institution to accommodate his neurological condition which made it hard for him to study and write. The student had filed several complaints with the Department of Education and demanded the cutoff of federal funds to the institution. The regional office of the Department concluded that the individual had never made the institution aware of his handicap and so denied the award of relief. The district court ruled that the Rehabilitation Act does not create a private right of action, and the administrative determination was not in violation of the Administrative Procedures Act. Finally, injunctive relief to stop the payment of federal funds was not an available remedy. ***Salvador v. Bennett***, 800 F.2d 97 (7th Cir. 1986).

A student who was denied an optometry degree because he failed to adequately perform clinical procedures alleged handicap discrimination. The court of appeals ruled that the college was not required to change its clinical requirements when a handicap affecting motor skills prevented a student from successfully performing required preclinical procedures. The court found that the individual was not an "otherwise qualified handicapped individual." ***Doherty v. Southern College of Optometry***, 659 F. Supp. 662 (W.D. Tenn. 1987), *aff'd in part*, 862 F.2d 570 (6th Cir. 1988).

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